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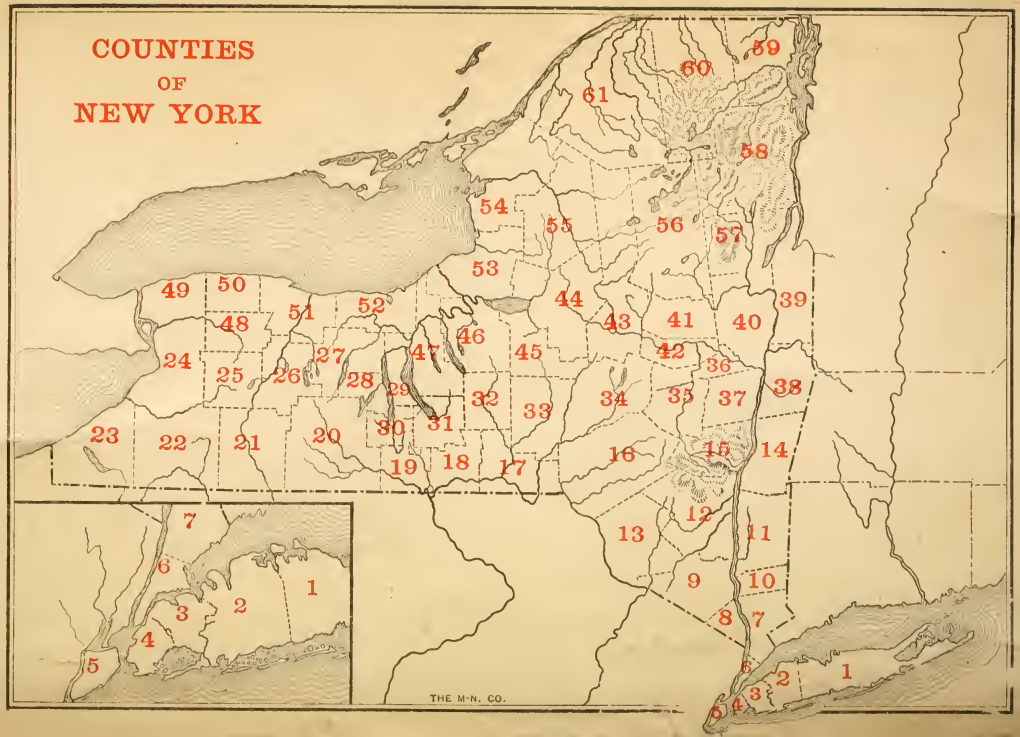
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PRESIDENT THEODORE ROOSEVELT

A MANUAL OF CIVICS

FOR

NEW YORK SCHOOLS

BY

C. W. BARDEEN

EDITOR OF THE SCHOOL BULLETIN

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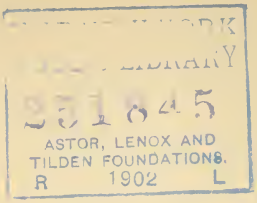

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Heavy faced numbers in parentheses, like (**210**), refer to consecutively numbered paragraphs of the national and state constitutions, pages 612 to 676.

Numbers separated by colon from a date refer to chapters of the state laws of that year; thus 521:1901 is chapter 521 of the laws passed by the New York legislature of 1901.

B with roman and Arabic numerals refers to the second edition of Bryce's American Commonwealth; thus B ii.612 refers to page 612 of the 2d volume.

Prentice stands for Prentice's History of New York; Hadley, for Hadley's Education of the American Citizen.

YALE

PREFACE

It is now a quarter of a century since I first published Northam's Civil Government, the early editions of which bore upon the title-page the words "for common schools", the distinction of the book. Civil government had been hitherto a high school study, ranked in common estimation in the group with logic and mental and moral philosophy. The book was a great assistance to the movement that began about that time to introduce the subject lower down, especially in the 8th and 9th grades. The success of the book may be judged from the fact that it has passed through 177 editions, and that only last October 1,150 copies were ordered for a single institution, the New York City Normal college.

As a presentation of the facts of civil government that book has never had a rival. But there has recently developed, especially in regents schools, a demand for more of the history and the philosophy of civics. In deference to that demand this book has been written, and is believed to present all the valuable features of its predecessor, with an adequate response to the requirement for broader treatment. The regents

syllabus has been followed directly; and to make sure that the book covered all the topics now taught in New York schools under the name of civics, all the regents questions in civics for the ten years 1891–1901 have been published in a separate volume, with references by page to this book. All questions in the uniform and the state examinations from the beginning not covered by these regents questions have been added, and it may be said with confidence that this book traverses the entire ground indicated by these questions.

The advantage of historical treatment is not likely to be overestimated. It presents frequent opportunities for comparison, always one of the most effective phases of teaching, and suggests frequent contrast of our condition with that of our forefathers, which leads to an appreciation of our privileges, and a sense of our duties. So closely related is civics with history and with political economy that it is often difficult to know where to draw the line in teaching. Many topics are here suggested which it would be impossible to dwell upon, in the effort throughout to encourage reflection and discussion.

In mechanical structure the book has an open page, and is indexed so fully by headlines that one may turn in an instant to any part he wants to find. A marked feature is the thousands of

cross-references. I have aimed not only to make it easy for the student to look these up, but to compel him to do so, that his information may be welded together, instead of lying in his memory as isolated facts pigeonholed without connection. Teachers will appreciate the etymological references which are given in connection with most of the leading terms. These are made a means, not an end, and have been omitted where not likely to be helpful; it is, for instance, of little use to the pupil to know that reciprocity comes from reciprocus, of unknown origin. But where the etymology is given it will be found a help to understanding and fixing the words.

The references to Bryce's American Commonwealth* are frequent for three reasons: (1) because it is a book found in most school libraries; (2) because it is the most comprehensive view of American institutions that has appeared; (3) because the quotations give opportunity to point out that a good many features in which he found our institutions defective have been remedied in New York, especially the conditions surrounding the primary meeting and the ballot.

There is no pessimism in this book. I believe in our national government, and in the constitution and laws of New York, and I have endeav-

*2d edition; indicated throughout the book by B, with number of the volume and page.

ored to make pupils who use this book believe in them. It is not a time to despair of the republic when Seth Low is mayor of New York, Benjamin B. Odell governor of the state, and Theodore Roosevelt president of the United States.

Aristotle calls man "a political animal". This book is an attempt to make New York boys and girls intelligent political animals. I have had in mind this statement of President Hadley's, from whose book I have quoted frequently:

"Among the many demands which are made upon our schools and colleges at the present day, none is more universally voiced than the demand for a fuller course of political education. And for this there is good reason. With the growing complexity of modern life, the difficulties of social organization and government are increasing. With the growing pressure toward specialized training for varied spheres of usefulness, the danger that we shall sacrifice the general basis of higher education which will enable us to cope with these difficulties is also increasing. It is not enough for our schools to fit men and women to be parts of a vast social machine; it must prepare them to be citizens of a free commonwealth. If our educational system fails to do this, it fails of its fundamental object."[1]

[1] Hadley, "The Education of the American Citizen," page 135.

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BARDEEN'S CIVICS

CHAPTER I

INTRODUCTION

The man who steered a Roman ship was called the *gubernator*, and from that word we get our English word **government**, the steering of conduct so as to reach the desired ends of living. As the wise pilot varies the course as little as possible, so a wise government interferes only when necessary; but as a ship without a rudder drifts to ruin, so mankind without government would go to destruction.

There are many kinds of government. Man must be **self-governed**; the man with an ungovernable temper is unhappy and dangerous.

Till he arrives at maturity he is subject to **family government**; the child is learning by experience what is wise or unwise in conduct, but the world can not wait for him to try all the experiments—he must by obedience to his parents get and give the advantage of the accumulated experience in conduct of many generations.

When he goes to school he becomes subject to **school government**. He learns that he must be

regular and punctual in attendance, prepare the lessons assigned, study quietly, follow promptly the signals for concerted action; in short that he must obey the teacher, even if he does not always see why.

At recess, too, he finds a system of **playground government.** The games are played by rules which he must learn and follow, or he will not be allowed to play. He must yield to the direction of the captain of the nine, and obey the decision of the umpire. He must not be greedy or he will be despised; he must not be boastful or he will be laughed at; he must not cheat or he will be shunned. He finds himself surrounded by more or less definite rules of conduct, instituted by the boys themselves but recognized as binding.

Before he is very old he learns that he and his playmates and his teachers and his parents are all under a pervasive system of government. He sees policemen with authority to forbid certain acts, and to arrest and lock up people. He finds that everybody who owns a house pays taxes on it, and as it is often done grumblingly he knows some authority compels the payment. He hears now and then of elections and of officers, and is told that such a man is a judge, that such a man is supervisor, that such a man is sheriff. He hears a good deal about the law,

and what is done to those who violate it. So he comes to realize that when he no longer feels parental and school and playground authority, he will still be under a similar but much more extensive authority, which he learns to call **civil government,** or the government of the people as a community (so called from the Latin word *civis,* the state); and he will naturally be interested in **civics,** or the science of civil government. He has studied the rules of base-ball, so as to know how to play correctly. He will want to study civics, so as to know how to exercise his duties as a citizen.

His experience at home and in school and on the playground has taught him the advantages of government. He knows that boys never accomplish much in a body unless they have a recognized leader, and he will see that men too must need leaders. Single persons could not build bridges or school-houses, or maintain a post-office system, and there must be some one to direct, with authority to compel.

He knows that people have selfish instincts which only authority will restrain; that the little would be at the mercy of the big, the weak at the mercy of the strong, the quiet and industrious at the mercy of the noisy and the lawless, unless there were in the community a sense of justice and a power to enforce it.

He knows that when people are together each must do his share of whatever is for the common good; each must respect the rights of others, and if he is unwilling to do so must be compelled to.

But who shall direct? who shall do this compelling? He knows how leaders among boys are chosen, and he will naturally want to know if leaders among men, these directors and compellers, are chosen in the same way.

He is ready to recognize the advantages of civil government if it is wisely framed and honestly administered; and he should feel the same interest in learning about it that he feels in discussing the rules of base-ball or the management of the captain of the track-team.

That is what this book is to teach him. Of all the knowledge he gets in school, none is of more practical value than this. As a boy he may or may not belong to a ball-club, but when he becomes 21 years old he will certainly be a citizen, with as much right and as much duty as any other citizen to help form and direct and maintain the civil government under which he lives. He knows that boys accomplish things by a long pull, a strong pull, and a pull all together. He will be right in thinking that men accomplish things in the same way, and that a knowledge of civics will help them do it.

But how about the girls? Are they also interested in civics? A century ago this would have seemed unlikely, for in those days a girl's education was based on "accomplishments"—music, dancing, "polite conversation", and perhaps a little French, the object being to make her attractive to men. But in these days the education of girls is becoming as broad as that of boys, and most of the same paths of usefulness are open to them. Men no longer find it necessary to adapt their conversation to women, but talk with them upon all the current topics of the day, expecting to find them intelligent and well-informed. In many places women have taken the lead in movements for civic reform, and the potency of their influence is recognized wherever such reforms are undertaken.

Moreover the discrimination of sex is disappearing in civil government. In some states women have the same rights as men to vote and hold office. In New York they have these same rights in school elections; and the legislature of 1901 gave to women who are property owners the right to vote upon propositions to raise money. Women have then the more reason to know about civil government because as they begin to exercise these rights the public will be watchful to see whether they do so intelligently.

It is a capital idea occasionally to turn the civics class into a debating-club. There are many questions that are not yet decided, usage differing in different states: as for instance whether the local management of schools should be by district or by township; whether judges should be appointed or elected; whether the right to vote should depend upon sex or education or property, etc. Even principles pretty well settled, as that a republican form of government is preferable to a monarchy, may be more firmly fixed by a debate in which all that can be said in opposition is brought forward and refuted. Frequently there are local questions under discussion by the parents, as whether a new schoolhouse shall be built, that may be profitably discussed in the class.

Such discussion should always be fair and candid, the object being not to triumph in debate but to contribute toward the true solution of the problem. The rules of debate should be followed, and the class should have access to Gore's "Manual of Parliamentary Practice" or some similar work. The most important rules are these:

1. There must be a chairman, whose rulings are to be promptly obeyed.

2. No one may speak until he has arisen, ad-

dressed the chairman, and been recognized by name.

3. The one thus recognized "has the floor"; that is he must be allowed to speak without interruption so long as he uses proper language, confines himself to the question, and does not exceed the time limit, if there be one.

A debating club may be formed outside the class, and if well managed is likely to prove of great value to its members. It is said that nearly all the men who have had powerful influence as English statesmen were trained in the debating clubs of Oxford and Cambridge.

It might be well to turn the school for an hour or two into a school meeting (see page 54). The forms will be found in the code of Public Instruction (1887 ed., pp. 180–195). The pupils will elect a chairman and clerk, trustees, and collector, and consider the powers named on page 54. A town-meeting (see page 31) or a mock court (see page 263) may be held in like manner. Pupils are advised to attend such meetings and become familiar with the actual proceedings.

CHAPTER II

THE TOWN

In most of the United States the unit of civil government is the town.

In the case of schools or of roads the town is sometimes divided into districts (see page 48), but this is only for special purposes; for general civil powers the town is the unit.

The word town comes from the old English word **tun**, meaning the fence or stockade with which our German ancestors long before their invasion of England in A. D. 449 used to surround their groups of houses and the untilled land or **mark** about them, for purposes of defence.

The town of the low-Dutch tribes that settled in England was originally the stationary home of a **clan** (from *clann*, a Gaelic word meaning children, descendants), which grew up from a nucleus of one or more families wandering about together in search of food and united for aggressive or defensive warfare. This prevailed under different names among all uncivilized peoples; among the American Indians a group of clans was called a **tribe** (from Latin *tribus*, originally a third part of the people, afterward merely a

division). It developed into a union of those who claimed a common ancestor, and prevailed especially in Scotland and Ireland.

The prefixes Max (son of), and Ua or O' (grandson of) arose in this way. Thus MacCarthargh (McCarthy) was the son of Cartach; Ua Conchobair (O'Connor) was the grandson of Conchobair.

"As they fought side by side on the field, so they dwelt side by side on the soil. Harling abode by Harling, and Billing by Billing, and each 'wick' and 'ham' and 'stead' and 'ton' took its name from the kinsmen who dwelt in it. In this way, the house or 'ham' of the Billings was Billingham, and the town or township of the Harlings was Harlington."[1]

In this primitive Teutonic democracy, described by Tacitus as **vicus** and still prevailing in its essentials in the smaller cantons of Switzerland, the lowest territorial unit was the **hide** (Anglo Saxon *hīd*) of land, estimated at 80 to 120 acres, and supposed to be enough for the maintenance of a single family. The lowest political unit was the enlarged family, the **gens** of the Romans, tracing descent from a common forefather; and its territory was called the town. The cultivated land was fenced in and formed the town proper. In other lands it was known as the **Gemeinde** (Germany), the **commune** (France),

[1] Green's Short History of the English People.

or the **mir** (Russia). It has always been the smallest political unit with its own assembly and its own organization.

Two other names are often used for the town.

Originally the towns as thus introduced in England were democracies, but during the long contests that followed the invasion, though the inhabitants still had some of their former privileges, they all became subject to lords, and the towns were regarded as estates. In this sense they were then called **manors** (from Latin *manere*, to remain, the permanent residence of the lord and his tenants).

When England became a Christian country the church assumed many of the functions of government, especially taxation, and divided the country into **parishes** (from Greek *para* and *oikos*, beside the dwelling), usually retaining the geographical boundaries of the towns; so the name town lost its original significance, and now usually means there what we call a city; it is often applied as here to village or city life as distinguished from country life. (See page 97.) In like manner, since the abolition in England in 1868 of compulsory church rates, the parish has ceased to be of importance there in local government.[1]

In New England the town was originally a

[1] Enc. Brit. xviii. 296.

parish, practically a church congregation grouped about the "meeting house", which served for civil as well as for religious assemblies. In some colonies only church members could vote. The size of the township was determined largely by the distances from which it was convenient to attend the central church, and when a new church was needed a new town was formed. Towns in Connecticut and the West were formed by congregations coming from Massachusetts, which made grants of land not to individuals but to groups of people who wanted to attend the same church.

These towns were self-organized, self-governed, and had many features of the community proper, where everything is owned in common. Every town had its "common", land open to all for pasturage; and some towns had common woodlands.

In New York during the first 30 years under the Dutch there was little local government; the local officers for such settlements as were formed on the Hudson and on Long Island were appointed by the governor. In 1653 New Amsterdam was incorporated on the plan of Dutch towns, and some of the English towns on Long Island had organizations similar to those of New England. The town is now organized or its boundaries changed by the board of supervisors.

Whenever the English colonists in America retained the forms of the English church, they called the towns parishes, the name disappearing when the church and the government became distinct. In South Carolina this term was used up to the civil war, and it is still used in Louisiana.

The word **township** is often used synonymously with town, but it refers more specifically to the territory covered by certain boundaries. Congressional townships, established by national surveys, are 6 miles square, and may have limited governments of their own, under provisions differing in different states. There may be within the township a more elaborate town government distinct from that of the township. A form of township government has sometimes been maintained, as in New Haven till recently, and in Chicago till 1901, long after the original town had been merged in a city, and it was impracticable to separate the interests of the town from those of the city.

In the clan, in the tun, in the town and manor and parish, one feature has always been characteristic — the people have governed themselves directly and in the simplest way through formal meetings, where all had equal right to speak and to vote. This **town meeting** realizes Abraham Lincoln's ideal of "government of the people, by the people, and for the people".

The Greek *ecclesia*, held in the *agora*, and the Roman *comitia*, held in the *forum*, were something like modern New England town meetings.

The first American town meeting was held in Dorchester, Mass., in 1633, and it was agreed to hold such meetings monthly, determining all matters relating to the town by a majority vote.

The influence of the town meeting was considered so important by Jefferson that he said: "These wards, called townships in New England, are the vital principle of their governments, and have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self-government and for its preservation. * * * We owe to them the vigor given to our Revolution in its commencement in the Eastern states."

Bryce says (i.591): "The town meeting has been not only the source but the school of democracy." But he remarks (i.567): "When, however, the town meeting has grown to exceed seven or eight hundred persons, and still more when any considerable section are strangers, such as the Irish or French Canadians who have latterly poured into New England, the institution works less perfectly, because the multitude is too large for debate, factions are likely to spring up, and the new immigrants, untrained in self-government, become the prey of wire-pullers or petty demagogues."

CHAPTER III

POWERS OF THE TOWN

In law the powers of the town are political and corporate.

The town is a body **politic** (from Greek *polites*, a citizen), being, so far as pertain to the powers entrusted to it, the entire body exercising political functions.

It is also a body **corporate** (from Latin *corporare*, to shape into a body); that is, in business matters it may act as a single person—may borrow money; may buy, rent, and sell property for public uses; may make contracts; may sue and be sued; etc.

The three functions of government are (1) **legislative** (from Latin *lex* and *lator*, proposer of a law), law-making; (2) **judicial** (from Latin *judex*, judge) law-interpreting; and (3) **executive** (from Latin *exsequi*, to follow to the end), law-enforcing.

(1) Legislative Powers

The legislative powers of the town are largely limited to passing **by-laws** (or town-laws, the Danish prefix meaning *town*, as in Der*by*) for the

regulation of local matters, so as to preserve peace, good order, and the public health.

These regulations are subordinate to the laws of the state and of the nation. Thus in 1901 the New York legislature passed a law restraining local authorities from limiting the speed of automobiles to less than 8 miles per hour.

The most important legislation committed to towns in New York is the power to determine whether licenses to sell liquor shall be granted. If the vote is for "no license" the sale of liquor in the town except upon physician's certificate is unlawful.

In New England the general levying of taxes is done by the town, but in New York and usually elsewhere it is done by the county, the amount required by the State being seldom more than one-tenth of the amount raised. (See page 299). Strictly local expenditure is however determined by the town, and the tendency is to increase its power[1], recent laws giving it power to provide water and sewer systems, etc. (See page 45.)

(2) Judicial Powers

In the early days of the New England towns the judicial power was unlimited; the town of Plymouth executed one of its citizens for murder. But now the judicial power of the town is

[1] 481:1897.

vested in the 4 **justices of the peace**, each of whom has power to hold a **justice's court**, where he hears and determines small cases, both civil and criminal.

A justice may issue **warrants** (from old high German *werōn*, to grant, hence something granted) for the arrest of persons accused of crimes; and **summonses** (from Latin *sub*, under, and *monere*, to warn) and **subpoenas** (from Latin *sub*, under, and *poena*, punishment) requiring persons to come to court to defend suits or to give testimony. He may try civil cases where the amount involved does not exceed $200. While his criminal jurisdiction is mainly over small offences, he sometimes examines persons charged with serious crimes, and either acquits them or remands them for trial to a higher court (see page 77).

(3) Executive Powers

The powers of the town are mainly executive; and as the voters of the town cannot get together every day to transact business, their principal duty at town meeting is to elect officers to do this executive work.

In New York town meetings are held **biennially** in the odd years, on the second Tuesday of February[1] unless some other date is fixed by the

[1] In Erie county the time is the second Tuesday of March. In counties having more than 130,000 the time is that of the general election (34, 174:1901) and the term of office of those elected begins on January 1 following.

board of supervisors, which must be between February 1 and May 1 (law of 1897), or at the time of the general election, the first Tuesday after the first Monday in November.

Special town meetings may be called on petition of 25 taxpayers, or by the town clerk.

A town primary, or caucus (see page 176) is held by each of the principal political parties, and the nominations must be filed with the town clerk at least 15 and not more than 20 days before the town meeting. Vacancies arising may be filled by the party committee (see page 183), but must be filed at least 6 days before town meeting.

The county clerk prepares the printed ballots containing all such nominations (see page 168).[1]

The primary prepares a list containing the names of at least 2 persons qualified to serve as **inspectors of election** for each election district in the town, which list, duly certified, is filed with the town clerk, like the partv certificate of nomination.

The Town Meeting

The **presiding officer** is a justice of the peace (see page 36), and the **clerk** is the town clerk (see page 35). The election is conducted all day as described on page 166. The meeting is called to order at noon, and any voter may offer a pro-

[1] 174:1901.

position. All are at liberty to discuss it, and the vote is usually by aye and no[1] (see page 165).

Questions of expenditure must be introduced before 2 p. m., and if the amount is more than $500 it must be voted by ballot.[1] In such case the town clerk posts the proposition in conspicuous places at least 10 days before the meeting, and has printed ballots prepared both for and against. No town, county, village, or city may give or loan its property or credit to any individual, association, or corporation; or become directly or indirectly owner of stocks or bonds in any association or corporation; or incur any indebtedness except for town, county, village, or city purposes, including such provision for the aid or support of its poor as may be authorized by law (250). For requirements as to voters see page 154.

Upon propositions to raise money only those are allowed to vote who own or whose wives own property assessed upon the last preceeding assessment roll.[1] Women who own such property and have the other qualifications of voters except sex, are allowed to vote on such propositions.[2]

The map on p. 486 shows how one of the counties of the state is divided into towns. For table of the towns and cities of the state by counties, see p. 575. Turn to the map of the state on the inside of the first cover, and consider what would

[1] 598:1901. [2] 509:1901.

be the effect if there were no units smaller than the 61 counties there shown, and consider what modifications in the town meeting would be necessary to adapt it to so large a unit.

For analysis of town government and tabulated list of officers see page 1.

CHAPTER IV

THE TOWN OFFICERS

Town officers in New York are mostly elected for 2 years, except the justices of the peace, who are elected for 4 years. For salary and other details see table, page 1. They are as follows:

The **supervisor** (from Latin *super* and *videre*, to oversee) is the chief executive officer of the town (**179**). Besides (1) representing the town on the county board of supervisors (see page 64), and county board of canvassers (see page 173), and (2) being chairman of the town board (see page 43), he

(3) receives the school money of the town and pays it out by order of the trustees;

(4) receives and pays out all money raised for defraying town charges, except that raised for the support of the poor (see page 40), and for highways and bridges (see page 41);

(5) keeps a record in a book for that purpose of all money received and paid out, and delivers it to his successor;

(6) represents the town in all suits in which it is a party, and in other transactions.

Cases as to disputed valuation of school prop-

erty, where a district is partly in one town and partly in another, are adjusted by the supervisors of the two towns.

For his duties in making up petit jury list see page 81. For his duties as to assessment roll see page 39.

The pay is for town work $2.00 a day; and for county work $4.00 a day, with 8 cents a mile for once going and returning from his residence to where the sessions are held. He also receives a percentage for paying out school money, and for copying the assessment roll (see page 39) 3 cents a line for the first 100 written lines, 2 cents a hundred for the second 100, and 1 cent a line for all in excess of 200.

In counties having more than 130,000 and less than 150,000 the members of the board of supervisors receive an annual salary of $250; with additional pay for such services as shall be a town charge, with mileage as above, and fees as above, and 1 cent for each line of the tax-roll actually extended by them.[1]

The **town clerk** is the recording officer of the town. Besides (1) acting as recording clerk of town meeting (see page 31), (2) calling special town meetings (see page 31), he

(3) has custody of all the records, books and papers of the town;

[1] 34:1901.

(4) files the papers, chattel mortgages, certificates of oaths, and other papers required by law (see page 535), and certifies to them when required;

(5) reports to the board of supervisors all money voted by the town since their last meeting;

(6) notifies persons of their election to office;

(7) reports to the county clerk immediately the name of any constable elected and qualifying; and within 20 days the names of all persons except inspectors of election elected at any town meeting, and whether they have qualified, and in the case of constables, reports to the county clerk immediately the names of any elected;

(8) immediately notifies the county clerk whenever a vacancy exists in the office of justice of the peace, with the date and the cause;

(9) keeps the record of births, deaths, and marriages in the town;

(10) delivers to his successor all books, papers, etc., belonging to the office.

The pay is $2.00 a day for the time employed, with fees for recording and filing papers.

There are 4 **justices of the peace** (223) whose duties as (1) judicial officers of the town have already been described (see page 29). They also

(2) take acknowledgment of conveyances of property (see page 535);

(3) administer oaths; and act as members of (4) the town board (see page 43), and (5) the board of health (see page 45).

The term of office is 4 years, 2 being elected biennially. Their pay is mostly by fees, but they receive $2.00 a day when employed by the day.

Before taking office they must qualify before the county clerk, and execute an undertaking with 2 sureties to pay over on demand to the person authorized to receive them all moneys received by them by virtue of their office.[1]

They may be removed for cause (223).

The **constables** (1) serve the warrants, summonses, and subpoenas issued by justices;

(2) arrest and have custody of persons accused of crime, and bring them before the justice for trial;

(3) collect money upon execution (see page 40), and if necessary sell property to satisfy the same;

(4) see that order is preserved in the community;

(5) attend the higher courts when so directed by the sheriff (see page 66).

The number is determined by vote of town-meeting, but may not exceed 5. The pay is mostly by fees. In counties of more than 200,000 and less than 300,000 the fees for summon-

[1] 398:1901.

ing a jury in civil or criminal action is $3.00 without mileage.[1]

The word constable (from Latin *comes* companion, and *stabulum*, stable) meant in the middle ages master of horse, and hence a high officer in monarchical establishments. The constable of France was the first officer of France, and had command of the army. The lord high constable of England was also commander of the army and keeper of the peace of the nation, with high judicial powers. The office was abolished in France in 1667, and the present powers of the constable in England are similar to those in the United States, where he is to the justices court what the sheriff is to the county court (see page 67).

The 3 assessors (from Latin *assidere*, to sit by, as judges) besides acting (1) as fence-viewers (see page 46),

(2) make an inventory of all the real estate (property in houses and land) in the town, recording the number of acres owned by each person, and estimating the real value of the land, including the buildings thereon;

(3) make an inventory of the personal property (all property other than real estate, such as money, stocks, bonds, mortages, merchandise, etc.), and after deducting just debts and exempt property assess it at its full value;

[1] 377:191.

(4) meet on the 3d Tuesday of August and on Sept. 1 of each year to hear complaints and to rectify mistakes in the assessment roll;

(5) on or before Sept. 1 deliver the assessment roll to the town clerk, to remain on view for 15 days, public notice being given;

(6) on or before Sept. 1 deliver to the supervisor a copy of the roll, making oath that it is correct according to the best information they have been able to obtain.

The supervisor delivers the roll to the board of supervisors at their next meeting. The board of supervisors examines the rolls from the different towns, equalizes and fixes the taxes for the county, issues warrants for their collection, and delivers them with the roll to the supervisor.

He delivers the same to the collector on or before Dec. 15, and delivers a copy of the same to the town clerk. A board of three State assessors afterwards takes these county rolls and equalizes the taxation. See pages 208, 212.

The **collector** (from Latin *con*, together, and *legere*, to gather) (1) receives from the supervisor (see page 65) the tax-list and warrant;

(2) notifies the public that he has received it, and where taxes may be paid;

(3) if the tax is not paid within 30 days calls upon the owner of the property and demands payment; and if payment is still refused or neg-

lected may levy upon any personal property and sell it at public sale, refunding to the owner whatever is received above the tax and cost of collection.[1] When unable to find personal property to collect upon, he so reports to the county treasurer.[2]

Property thus sold may be redeemed under certain conditions.

(4) pays over the money collected to the supervisor and other officers named in the warrant;

(5) pays on or before Feb. 1 to the county treasurer (see page 69) all money collected for the county and State.

The pay is by fees of 1 % upon taxes paid in during the first four weeks after the warrant is posted, and 5 % on those paid afterward. He gets extra fees where property is sold for taxes.

The **overseer of the poor** looks after persons in indigent circumstances, and provides for them either at home or in the county poor-house, so far as the town is legally holden or may direct.

Paupers who have no legal settlement in any town, that is are not legal residents therein, are supported by the county; hence it is part of the duty of the overseer of the poor to ascertain whether the responsibility rests on the town or on the county. When a town pauper is sent to the county poor-house (see page 69), the town pays for his maintenance. In some counties all

[1] 159:1901. [2] 517:1901.

paupers are supported by the county, as a county charge.

When temporary aid is furnished, in the hope of enabling persons to help themselves and not become a permanent burden upon the community, it is called out-door relief. It is always better to prevent poverty than to sustain it.

The pay is $2.00 a day. The number may be one or two, as the town determines by vote. The town may also vote to have 1 overseer appointed by the town board; in this case the term of office is 1 year beginning May 1, and the salary is fixed by the town board, but may not exceed $1,000.

Paupers in the whole Union in 1880 were 88,665, of whom 67,067 were inmates of the almshouses, and 21,598 in receipt of out-door relief. This was only 1 to 565 of the whole population. In England and Wales in 1881 there were 803,126 paupers, to a population of 25,974,439, or 1 to 32 of population.[1]

The **highway commissioners** besides (1) acting as fence-viewers (see page 46),

(2) have the care and general supervision of the highways and bridges;

(3) when directed by a jury called for that purpose may lay out new roads or discontinue old ones;

[1] B. i.588.

(4) upon petition of all the owners of the property through which the road is to pass may lay out a road without a jury;

(5) meet with commissioners of other towns to consider laying out and altering roads extending into both towns;

When the commissioners of different towns cannot agree, a board of 3 commissioners is appointed by the county judge;[1]

(6) divide the town into road districts, and appoint an overseer for each (see page 49);

(7) require reports from these overseers on May 1 of each year of repairs needed, and personally inspect the same within 20 days, and superintend the repairs;

(8) assess each taxable inhabitant in each district and determine the amount of tax for each, and the amount of work needed on the road;

(9) receive the reports and the unexpended money from the overseers, expend the road money as directed by the town, and report to the town board;

(10) inspect the highways and bridges between Sept. 1 and Sept. 15 of each year, and if it appears that the required labor has not been performed, report to the supervisor what is due; whereupon, the supervisor, after a hearing, reports the same to the board of supervisors, and

[1] 162:1901.

the labor, estimated at $1.50 a day, is collected like unpaid taxes.

Where a railway is seeking right of way through a town the matter is referred to the highway commissioners, and their responsibility may thus become very serious.

For county roads see page 70; for side-paths see page 71.

Where a **pound** (from Anglo-Saxon *pund*, an enclosure) is maintained by public authority for the restraint of animals wandering astray or trespassing, there is a **poundmaster,** to keep beasts delivered to him until reclaimed and charges paid.

Some States have also a **field driver,** whose duty it is to take stray animals to the pound.

A **board of auditors** may be elected by towns that vote to have such a board. It hears and examines all claims against the town for money, and certifies their correctness to the supervisor. It also examines the accounts of the overseers of the poor and of the highway commissioners, and in certain cases, of justices of the peace and constables.

Besides these officers directly elected, there are certain boards made up of persons elected for other purposes and acting on these boards *ex officio* (by virtue of office).

The **town board** consists of the supervisor, who

is chairman, the town clerk, and the justices of the peace or any two of them.

It holds at least two meetings annually at the town clerk's office. (1) On the Tuesday preceding the biennial town meeting and on the corresponding dates in each alternate year, to audit the accounts of all officers who receive and disburse money for the town. The board makes a statement and appends a certificate thereto showing the accounts of each officer, and files the same in the office of the town clerk open to the public for inspection.

(2) On the Thursday preceding the annual meeting of the board of supervisors, to audit accounts and allow or reject charges, claims and demands against the town. Duplicates of accounts allowed and certificates for the same must be made and signed by the majority of the board. One of these duplicates is to be kept on file in the town clerk's office, and one is to be delivered to the supervisor of the town to be laid before the board of supervisors at their annual meeting. This work is done by the board of auditors (see page 43), where the town elects such a board.

The board of supervisors causes the amounts specified in these certificates to be levied and raised upon the towns in the same manner as they direct to levy and raise for other town

charges. The town tax list for each town is made by some one ordered by the board of supervisors, usually by their clerk.

The town board appoints inspectors of election (page 48) and truant officers (see page 307).

It is also authorized by law to fill **vacancies** occurring in the town offices. Such appointments hold until the next biennial town meeting, except in cases of justice of the peace when the term expires Dec. 31, succeeding, in which case the appointee fills only the unexpired term.

It also has the care of abandoned cemeteries;[1] and on petition of a majority of the owners of taxable real property may establish a water district and appoint water commissioners;[2] or establish a sewer system and appoint sewer commissioners.[3]

In Erie county its powers are much extended.[4]

The **board of health** is made up of the supervisor, justices, town clerk, and a citizen appointed by these. It appoints a **health officer,** who must be a physician, and enforces sanitary regulations for the town, co-operating with the state commissioner (see page 205) when required.

It supervises the registration of births, deaths, and marriages.

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[1] 386:1901. [2] 471:1901. [3] 348:1901. [4] 663:1901.

The assessors and the highway commissioners constitute the **fence viewers**, who (1) settle disputes as to partition fences;

(2) order changes and removals in fences;

(3) determine where fences or streams or other line fences shall be placed, and divide the expenses among the owners;

(4) settle damages arising for trespasses of cattle on account of poor fences;

(5) appraise damages for sheep killed by dogs, etc.

They serve only on application. The pay is $1.50 a day.

Where the township system of schools prevails town officers are elected to take care of them—in Indiana a trustee; in Pennsylvania a board of school directors; in New England a school committee.

In some states there are **surveyors of lumber,** who measure and mark lumber offered for sale; and **sealers,** who test and certify weights and measures used in trade.

Bonds (from Sanscrit *bandh*, to bind) are required of the supervisor, justices of the peace, constables, collector, overseer of the poor, and highway commissioners, since all of them handle money belonging to the town, and the town must be secured against loss.

The following **oath of office** must be taken

(277) by all officers before they enter upon their duties:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of ....., according to the best of my ability."

A further oath must be taken (278) that the officer has not used bribery, which is a felony[1] (280).

No other oath, declaration, or test is required as a qualification for any office of public trust (278).

The county clerk administers this oath to the justices of the peace, and a justice of the peace to all other town officers except inspectors of election, one of whom administers it to the chairman, and the chairman to the others.

[1] B i. 444.

CHAPTER V

SUBDIVISIONS OF THE TOWN

While the town is for most purposes the unit of government, it is in some states divided into districts for elections, for the care of roads, and for the management of schools.

Election districts are established by the town board for the convenience of voters in towns so large that it is inconvenient to meet at a single poll.

For each election district, whether the entire town or a subdivision of it, 4 **inspectors of election** are appointed by the town board within 30 days after each biennial town meeting, 2 from each of the lists furnished by the town primaries of the two parties which cast the highest and the next highest number of votes at the last preceding election[1] (see page 183).

If more than one list is presented by either party, that is used which comes from the faction of the party was recognized as regular at the last preceding state convention of the party, or that is recognized by the state committee.[2]

2 **poll clerks** are appointed, by the town board. They keep the **poll book**, and enter by continu-

[1] 536:1901. [2] 536:1901.

ous numbers the names of the voter voting, and the number of ballots voted, compare the poll book with the register, and complete the tally sheet.

2 **ballot clerks** are appointed, by the town board. They deliver the official ballots to the voters, announce the voter's name and the number of the ballot, and take care of the unvoted ballots.

Each of these officers must be a qualified voter in the district, of good character, able to speak and read the English language understandingly and to write it legibly, with a general knowledge of the duties of the office. He must not be a candidate for any office voted for in the district; or hold any public office except notary public, commissioner of deeds, assessor, justice of the peace, village trustee, water commissioner, overseer of highway, or a school district office; or be employed in any public office or by any public officer except these.[1] The term of office is 2 years.

Highway Districts

We have seen (page 42) that the highway commissioners divide the town into **road-districts**, and appoint for each an **overseer** or **pathmaster.** The pathmaster is to repair and keep in order all roads and bridges. He makes a list of the names

[1] 536:1901.

of the inhabitants of his district liable to work on the highway, and delivers it within 16 days of his appointment to the town clerk for the use of the commissioner of highways. He notifies these persons when to work on the road, sees that their taxes are worked out or paid; collects all fines and commutation money; on or before Sept. 1 reports to the highway commissioner (see page 42) all names of delinquents and the amount due, charging $1.50 for each day's labor so due; and pays over to him the amount of money remaining in his hands unexpended. His pay above his time for taxes is 12½ cts. an hour.

Whatever may have been the advantages of this system in the past, it is now wasteful and ineffective. The roads are "mended" usually by digging out the gutters and heaping the dirt into the centre. The natural soil when it is wet is muddy, when it is dry is dusty, and when it is frozen is rough. Most good roads are **macadamized** (so named from a Scotchman named Macadam who invented the process)—that is, covered to a considerable depth with small broken stone, that wears down to a hard surface. But this is an expensive process and requires scientific supervision entirely out of district reach. New York has now a good-roads law (see page 70), which provides that upon vote of the supervisors of a county the State will supervise and pay half the

cost of thoroughly made roads. Thus far the amounts appropriated by the legislature have been insufficient to meet the demand from all over the State for roads of this kind.

Most States authorize the building of plank or macadamized roads by private corporations, which are repaid for the cost of construction and maintenance by **toll** (from the Anglo Saxon word meaning what is counted out in payment), which is paid by travellers at certain points marked by gates. The modern tendency is to change toll-roads into public roads.

The importance of good roads was recognized in the provision of the United States constitution (**32**) giving to congress power "to establish post-offices and post-roads"; and though the railway has made the necessity less, it is still a serious matter of public economy that the highways should be well made and well kept.

School Districts

The **school district** is a survival of the early schools of New England, where each parish (see page 24) had its school as well as its church, the pastor often being the school teacher. When other sects got foothold this was no longer practicable, and the school became entirely separated from the church. As the towns grew to include several parishes, they also included several school districts, which for a long time retained their individual control.

New England, New Jersey, Pennsylvania, Indiana and many other states have discarded the district system, on the ground that the unit is too small to secure intelligent and economical management, to provide satisfactory instruction, or to give numbers enough to attain the best results. Many efforts have been made to establish the town system of schools in New York, but thus far without success. Some approximation toward it has come from the law permitting small districts to contract with larger districts to instruct their children, the smaller district usually providing a conveyance to carry the children to the school-house.

In the western states, where the rectangular townships of 6 miles square prevail, it is customary to build roads on the mile lines, and put a school-house on each alternate cross-roads, giving 9 for the town. The 16th and sometimes the 36th sections in each township were in 1787 set by congress for school maintenance.

Georgia makes the entire county a school district for the support of public schools.

The **annual meeting** is held on the 1st Tuesday in August. But if a district contains 300 or more children of school age, the **election** of school district officers must be held on the following day.

Special meetings are called by the trustees. The

clerk or some other person, if the office be vacant or he refuses to act, must serve a notice upon each qualified voter at least 5 days before the day of the meeting, stating the purpose for which the special meeting is called; no other business can be transacted.

A **qualified voter** is any person, man or woman, (*a*) of 21 years of age, (*b*) who has resided in the district for the preceding 30 days, (*c*) a citizen of the United States; and (1) who owns or hires or holds under contract to purchase real property in such district liable to taxation for school purposes, or (2) who is a parent of a child of school age that has attended the district school at least 8 weeks within one year preceding; or (3) who has permanently residing with him or her any such child; or (4) who owns and was assessed on the last preceeding assessment roll of the town exceeding $50 of personal property, exclusive of such as is exempt from execution.

The voter must have *all* the qualifications (*a*), (*b*), (*c*); and *one* of the qualifications (1), (2), (3), (4). When the right to vote depends upon children not their own residing in a family, only the head of the family may vote.

Unlike the election district and the road district, which are mere convenient subdivisions of the town, the school district is a political unit, with legislative and executive powers. (Compare with powers of the town, page 28).

Its **legislative powers** include principally (1) the erection and care of school buildings, (2) fixing the amount of school tax for the coming year, (3) selection of text-books, and (4) entering into contract with another school to instruct its children.

The first two of these powers are not unlimited. The school commissioner has power to order repairs upon the school-house, or to condemn it and order another built; nor can it vote more than $500 for building, hiring, or purchasing a school-house without approval of the school commissioner, or build a school-house until he has approved in writing of the plans for ventilation, light, and heating. If it fails to vote money enough to pay such teachers wages as the trustees choose to fix, the trustees may levy a tax to cover the amount required. The minimum length of the school year is fixed by law at 32 weeks.

Its **executive powers** are exercised through the following school officers, all elected for one year, except in the case of trustees where there are 3.

All these officers must be (1) residents of the district, (2) qualified to vote at its meetings, and (3) able to read and write. No school commissioner or supervisor may be trustee, nor may a trustee be clerk, collector, or librarian. A majority vote is required (see page 161).

There may be 1 **trustee** elected for one year, or 3 elected for 3 years each. The trustee is the chief executive officer of the district, with the sole power of making contracts and accepting work done. He has custody of the school property, employs the teachers,[1] admits and expels pupils, establishes the regulations and courses of study, raises by tax the money needed, and makes the annual report.

In the hiring of teachers he is limited to those **legally qualified,** that is, holding either (1) a uniform certificate, (2) a training class certificate, (3) a normal diploma, (4) a college graduate certificate, (5) a state certificate, or (6) a temporary license. This licensing of teachers is under control of the state superintendent (see page 309).[2]

He gets no salary, but may be fined $5 if he refuses to serve, and $10 if he undertakes to serve and neglects his duty. He may be removed by the state superintendent for neglect or disobedience of orders.

In fixing the course of study, he is required to provide **temperance instruction.** The law requires that the nature of alcoholic drinks and other narcotics and their effects on the human system shall be taught to pupils between the 3d year primary and the 2d year of the high school by

[1] B ii.286.

[2] For further particulars see Bardeen's School Law, pp. 89–104.

text-books in the hands of all pupils, and in the three lowest grades orally.

This law has caused extended and warm discussion. Its friends claim that it is a needed protection of the young against intemperance; its enemies, that it calls their attention to that of which they might better remain in ignorance.

The **clerk** makes out and keeps the records of the school district, posts notices of meetings, calls a special meeting when office of trustee is vacant, notifies persons elected to office, etc.

He receives no pay for his services, but is fined $50 if he neglects to deliver the records to his successor.

The **collector** must give a bond approved by the trustee. He receives from the trustee the tax warrant, collects the taxes, levies upon and sells personal property for unpaid taxes, and pays out money received upon order of the trustee.

He returns the tax-list and warrant to the trustee, to be given to the town clerk for preservation; and reports his collections, receipts, and disbursements to the school meeting, and on or before the 1st Tuesday in March to the supervisor.

He is paid by 1 % upon money received within 2 weeks of posting the notice and 5 % on sums collected thereafter. If he levies upon property, he receives 10 cts. a mile for travelling expenses.

A vacancy in the office is filled by the trustee.

A **treasurer** may be elected by majority vote as custodian and disbursing officer of all school money, paying out the same on order of the trustee.

A **librarian** is appointed by the trustee, usually a teacher, to have charge and supervision of the library.

Vacancies in the office of trustee are filled by election if held within 30 days; otherwise through appointment by the commissioner. Those in other offices are filled by the trustee.

A **union free school** may be established in any district by a majority vote at a meeting called for the purpose.

A **board of education** of not fewer than 3 or more than 9 is elected in place of the trustees of the ordinary district. It has, besides all the powers of trustees, the following additional powers:

(1) to elect the clerk and treasurer, (2) to fill vacancies on the board, (3) to adopt text-books, (4) to purchase furniture,—powers that in common districts belong to the district meeting;

(5) to purchase apparatus, (6) to repair schoolhouses and furniture. (7) to provide fuel and other necessaries, without the restriction in amount imposed on trustees;

(8) to hold gifts and legacies, (9) to remove

members of the board, to appoint (10) a superintendent (in villages of 5,000), and (11) an attendance officer, (12) to establish truant schools, (13) to levy without vote of the district a tax for contingent expenses—powers that do not exist in the ordinary district.

The **school meeting** also has greater powers than in an ordinary district, including (14) to vote a tax for a school-house without limit or approval of commissioner, (15) to provide free text-books, and (16) to establish an academical department (see page 322).

For further details as to legal provision for education see page 304. For table of district officers see page 2.

CHAPTER VI

THE COUNTY

As in the Roman system several *gentes* brought together formed the *curia*, so in the Teutonic and English systems, several towns were brought together to form **the hundred,** and disputes between the towns were settled at **the hundred moot,** like the town moot or meeting, but on a larger scale.

Mr. Green says in his "Short History of the English People": "The four or ten villagers who followed the reeve of each township to the general muster of the hundred, were held to represent the whole body of the township from whence they came. Their voice was its voice, their doing its doing, their pledge its pledge. The hundred moot, a moot which was made by this gathering of the representatives of the townships that lay within its bounds, thus became at once a court of appeal from the moots of each separate village, as well as of arbitration in dispute between township and township."

The name must at first have meant a numerical hundred of some kind, but lost its proper force and was used in a purely conventional sense as a geographical division.

It fell out of use in England, but appears in Delaware, where it is used instead of town for the divisions of counties (see next page).

A group of hundreds formed a **tribe** or **gá** or **shire**; as the town was a stationary clan, so the shire was a stationary tribe. In early English history this corresponded with an American state, having a full and separate organization.

It might be independent, it might lean upon a stronger neighbor, it might become a division of a kingdom, but it was the lowest group that had a distinct political power. The English nation grew out of the union of these shires, which retained their self-government long after they had been united under one king.

The name shire comes from *shear*, and means something shorn off. The old tribal divisions were wiped out in the Danish contest of the 9th century, and in the English re-conquest the land was mapped off or sheared out into *shires*, grouped conveniently about a central town, and bearing its name instead of that of the ancient tribe, as Worcester*shire*. The town in which the public buildings of the county are erected is known as the **shire town.**

In use the word shire became supplanted largely by the corresponding French word **county,** the territory held by a count, (from French *comte,*

Latin *comes*, a companion, a title never introduced into England, though the wife of an earl is called a countess). As such it has spread itself through all lands ruled, settled, or influenced by England.

In the southern states the county became the unit, if indeed there could be said to be an independent life below the state.[1] Divisions of the county were only for minor conveniences, as for election districts, for limiting the jurisdiction of a justice of the peace, etc. These divisions were sometimes called towns, but in Alabama and Kentucky they were called precincts, in Georgia militia districts, in Tennessee civil districts, in Virginia and West Virginia magisterial districts, in Louisiana wards or parishes, in Mississippi beats, in Delaware hundreds. The school is now becoming the nucleus of self-government in the south, as the church was in New England 200 years ago.[2]

While in New England the town has a distinct name, with historical associations of which the inhabitants are proud, in the south these associations all cluster about the county.

In the western States so many of the emigrants were from the south that the New England township system was largely modified by the county system.[3]

[1] B i.563, 564, 586. [2] B i.571. [3] B i.572.

In New England each county had its own regiment of militia, as each town had its own company, but in general the county was not an important division.

In New York the Dutch settlers created towns and manors and villages, but no counties. After the English conquest in 1664 a new system grew up, giving the county more prominence than in New England, and the town more prominence than in the south. Originally the county business was mostly judicial; but in 1703 a board of supervisors was constituted, made up of one supervisor from each township. This board has control over the towns, but is made up of representatives from the towns, thus forming in the fullest sense a **representative government.**

We have seen (page 26) that the township system is a pure democracy, and that the representative system was introduced when a few of the villages went to the muster of the hundred (see page 59).

The **shire-moot** was a still more important assembly. It was attended by a reeve and 4 freemen from every hundred, deputed to act on behalf of those whose interests they had come to guard. "The shire-moot was also the general folk-moot of the tribe, assembled in arms, to whom their leaders referred the decision of questions of peace and war"; but for minor matters

it was not practical for the entire tribe to assemble, and it was found wiser for each town to send men who knew its particular needs and would endeavor to secure them.

New York by putting more of the important business under county control has a government less purely democratic and to a greater extent representative than New England. Counties are organized by the legislature.

Pennsylvania carries the county system still farther. Instead of a board of supervisors elected one from each town, it has a board of three commissioners elected by the county at large.

In New York each town of the county, large and small, has an equal representation in the board of supervisors. In Pennsylvania each town is represented only proportionally to its number of voters. The difference is the same as that between the representation of states in the United States senate and house (see page 453).

Where one of the towns in a county is very much larger than the others, usually part or all of it becomes a city, and each ward of the city elects a supervisor. Hence when city charters are granted by the legislature the towns are careful to see that the number of wards created does not give the city disproportionate representation. In 1901 the town of Oneida, Madison county, became a city. The charter as originally drawn

provided for 6 wards, but the number had to be reduced to 3 before the charter was granted.

In New England the towns used to send each one member to the legislature, and this is still the case in Connecticut, where, in 1901, 12 cities with a population of 484,000 sent the same number to the house of representatives as 12 towns with a population of 8,800. The tendency of such representation is to make action provincial, the members caring more for the interests of their own section than for that of the state at large.

Statistics of the counties of New York with map are given on the first two inside cover pages of this book, and the counties as they existed during the revolutionary war on the following page.

The town is its own legislature, but the legislature of the county is the **board of supervisors** (257). Of the duties of the supervisor as a town officer we have already spoken (page 34), and of the duties of the board of supervisors as a board of county canvassers we shall speak later (page 173). We are now to consider its legislative duties. These are:

(1) to pass upon the abstracts of accounts as audited by the several town boards or boards of auditors (see page 43);

(2) to receive the reports of the county officers

and to audit their accounts and all lawful claims against the county;

(3) to equalize the assessed valuation in the towns, to apportion the state and county taxes (see page 300), to cause tax lists and warrants to be made out, and to issue warrants to the collectors (see page 39);

(4) to fix the salary of the various county officers;

(5) to make appropriations for county expenses (247);

(6) to divide the county into towns, and into assembly and school commissioner districts;

(7) to fix the time for town meetings (page 31);

(8) to appoint at its pleasure a county engineer (see page 70).

It has supervision of the county houses, jails, and other county property and may change the county seat.

The board is organized by the election of a chairman; and of a clerk, who records and publishes the proceedings, and sends to the state comptroller (see page 200) on or before the 2d Monday in December the aggregate and equalized valuation of the real and personal estate in each tax district in the county and the amounts of tax assessed for all purposes, with valuation and other statistics as to corporations.

CHAPTER VII

THE COUNTY CIVIL OFFICERS

The other officers of the county are elected at the general state election (see page 165). The term of office is 3 years, except in the case of the county judge and the surrogate, whose terms are 6 years (for reason, see page 262);[1] and of the loan commissioners (see page 74) who are appointed by the governor, for 2 years. In New York and Kings counties the term is 2 or 4 years (260).

Vacancies in the offices of county judge, surrogate (219); sheriff, district attorney, and coroners are filled by the governor; county treasurer and superintendent of the poor, by the board of supervisors; school commissioner, by the county judge.

The **sheriff** is the executive officer of the county. He may not hold any other office during his term, and so great is his power that to prevent abuse of it he is not eligible for re-election. He may be removed by the governor upon charges (260). The headman of the old English township was called the town reeve, and of the shire, the shire reeve, shortened into sheriff. He is the chief ministerial officer of the court.[2] The corresponding officer of the federal courts (see 284) is called marshal.

[1] In Greater New York 14 years. [2] B i.570.

His duties are (1) to execute civil and criminal processes—that is personally or by deputy, to serve legal papers, summon jurors, levy executions, sell property levied on, etc.;

(2) to be present at the drawing of jurors (see page 82), and cause them to be legally summoned;

(3) to attend the courts held in the county, and have custody of the prisoners,—he is "the right arm of the judge";

(4) to have charge of the jail and the prisoners;

(5) to keep peace in the county, for which purpose he may summon and compel the assistance of citizens when necessary.

He has the appointment of deputies and is responsible for them.

He is paid by fees; or in some counties by salary, or by salary and fees. He gives a bond with 2 sureties for $15,000, which must be renewed each year.

As headman of the county the sheriff in early English times had judicial functions, and in 1194, as a check upon the sheriff, a law was passed directing the counties to elect **coroners** (from *corona*, crown, because this officer was originally prosecuting officer for the crown), to hold court in the name of the king. This tradition remains only in the 3d and 4th of the duties named below. New York counties have 4 coroners who (1) look after and inquire into all mat-

ters concerning persons slain, or who have died mysteriously;

(2) subpoena witnesses, ascertain as far as possible all the facts in regard to the death, and issue warrants for arrest of parties presumed to be guilty, to be held for the grand jury, and report to the district attorney;

(3) in case of a vacancy in the office of sheriff, and there being no under-sheriff, one of the coroners designated by the county judge performs the duties of sheriff until said vacancy be filled by election or appintment;

(4) have power to arrest the sheriff upon criminal processes.

They are to make reasonable charges for holding inquests, to be audited by the board of supervisors. For performing the duties of the sheriff they receive the same fees as the sheriff. When a coroner cannot be secured for an inquest, a justice of the peace may act.[1]

The **county clerk** is the recording officer of the county. He (1) records deeds, mortgages, satisfaction papers, etc., and has custody of the records.

In New York, Kings. and Westchester counties there is a separate officer called the **register** (257), who has charge[2] of the recording of deeds, mortgages, etc.;

(2) prepares the ballots for elections, is clerk of the board of county canvassers (see page 173),

[1] 379:1864. [2] 174:1901.

and records the election returns, and transmits the results to the secretary of state;

(3) draws the grand and petit juries (see page 81), and makes return of the same ;

(4) is clerk of the courts held in the county (225), administers the oath to jurors and witnesses, and records the judgments.

He is paid by fees or by salary, and may be removed on charges by the governor (260).

The **county treasurer** (from Greek *thesauros*, a store laid up) is the financial officer of the county. He (1) receives the money collected by the town collectors for state and county taxes; and may sell lands for unpaid taxes[1] (see page 40);

(2) pays over to the comptroller (see page 200) the amount due the state;

(3) pays out the amount due the county, as directed by law;

(4) receives from the comptroller the school money due the county, and pays the same over to the supervisors, as directed by the school commissioner's certificate;

(5) makes annually a general financial statement to the board of supervisors;

(6) when his time has expired delivers his books and county funds to his successor, upon forfeit of $1,250[2]. As to liquor law, see page 203.

His salary is fixed by the board of supervisors

[1] 517:1901. [2] 112:1901.

at least 6 months before election, and cannot be increased or diminished during his term of office.

The **superintendent of the poor** (there may be 1 or 3) has the general charge of the county poorhouse, appoints persons to take charge of it, admits inmates (see page 40), and may send insane persons to the state asylums at the county expense.

In counties where there are no adequate hospital accommodations for indigent persons requiring treatment, he may upon certificate of a physician approved by the board of supervisors send at the expense of the county such persons to the nearest hospital approved by the state board of charities (see page 206).

The town overseer of the poor (see page 40) may do the same at the expense of the town.[1]

He renders to the board of supervisors an annual account of his action and his expenditures.

He is paid by the day, or by salary fixed by the board of supervisors.

A **county engineer** may be appointed by the board of supervisors, which fixes his salary. The term of office is 3 years, but he may be removed at the pleasure of the board.[2]

His duties are to construct highways under the **good roads** law,[3] under which the board of supervisors may, and upon petition of the owners of a majority of the lineal feet fronting upon it

[1] 103:1901. [2] 239:1901. [3] 115:1898.

must, pass a resolution that public interest demands that a certain highway be improved.

Thereupon the state engineer must investigate the need. If he approves, he recommends the kind of improvements he judges wisest, with estimate of the cost of the same, and forwards the plan and estimate to the board of supervisors. If the board vote that the improvement be made, it notifies the state engineer, who advertises for bids and superintends the construction of the road through the county engineer, if there be one, or if not through some competent person whom he appoints.

Of the cost of the improvements 50 % is paid by the state, and if the road was built by petition 15 % by the county and 35 % by the town in which the highway is located; if it was not built by petition, 35 % is paid by the county and 15 % by the town. The road shall thereafter be maintained by the highway commissioners under direction of the state engineer as a county road, the expense to be apportioned among the towns benefited.[1] (See page 50.)

On petition of 50 resident wheelmen, the county judge of any county except Albany may appoint from resident citizens 5 or 7 citizens who are cyclists, as a county board of **side-path commissioners,**[2] each to serve 5 years from Jan. 1 of the year of appointment.

[1] 464:1901. [2] 640:1900.

The board may construct and maintain **side-paths** along any public road or street, provided they obtain the written approval, in a town of the commissioner of highways or of the supervisor, in a village of the trustees, and in a city of the common council. Where there is a regularly constructed sidewalk they must obtain also the consent of the persons owning the abutting lands. The paths must not be less than 3 or more than 6 feet wide except by consent of the owners of the abutting lands.

The board each year adopts a badge to be attached to the bicycle and determines the amount of fee, not less than 50 cents or more than $1.00,[1] on payment of which the badge is given, to be attached to the left side of the front fork, and without such badge no wheel must be ridden upon a side-path. The money so received for badges constitutes a **side-path fund,** to be deposited with the county treasurer, and to be drawn on warrants signed by a majority of the board (1) for repairing existing paths, (2) for constructing new ones, (3) for planting shade-trees along the paths by consent of the owners of abutting lands, (4) for maintaining order on the paths, and (5) for the necessary expenses, including repayment of the necessary personal disbursements of the members of the board, who receive no other payment.

[1] In Monroe county the fee is 25 cts.

No horses, cattle, or other animals may be driven upon a side-path, and no person must ride a wheel at a rate faster than 10 miles an hour when passing another wheelman or a pedestrian.

Any person wilfully obstructing or injuring a side-path or violating any of the other provisions here given is guilty of a misdemeanor.

A **notary public** is authorized to administer and certify oaths, and affidavits, to protest unpaid notes and drafts, etc. Their number varies. They are appointed for 2 years by the governor, with approval of the senate, and are paid by fees.

A notary may act as notary in any other county than his own upon filing in the county clerk's office therein a certificate with a fee of $1.00.[1]

The County School Officers

The **school commissioner** (large counties are divided into two, three, or four commissioner districts, with a commissioner for each) is the educational officer of the county.

A trustee or member of a board of education vacates the office when elected commissioner, and the commissioner must not engage in teaching during his term of office. Women are eligible to the office. The salary from the State is $1,000, and the board of supervisors must allow

[1] 657:1901.

$200 and may allow more for travelling expenses. Vacancies are filled by the county judge.

He (1) on the 3d Tuesday of March apportions the school money among the districts (see page 31), sending duplicate certificates of the apportionment to the county treasurer and to the state superintendent, and certifying to the supervisor of each town the amount apportioned to each district;

(2) visits the schools, and makes recommendations as to courses of instruction, discipline, etc.

(3) may condemn school-houses if he finds them unfit for use;

(4) upon evidence of moral character and ability to teach grants to those who have passed the uniform examination certificates to teach, and may annul them;

(5) examines teachers classes, and grants certificates to those who pass the examinations;

(6) makes arrangements for teachers institutes;

(7) defines and alters the boundaries of school districts;

(8) on Aug. 1 makes a report to the state superintendent, including an abstract of the reports received from trustees.

Two **loan commissioners** have charge of the investments of the United States deposit fund, under direction of the comptroller. They are appointed by the governor for a term of 2 years,

and must give bonds. They receive as fees $\frac{3}{4}\%$ on the first $25,000 or less, $\frac{1}{2}\%$ from $25,000 to $50,000, and $\frac{1}{2}\%$ on more than $50,000 (in New York $\frac{1}{4}\%$ in sums exceeding $50,000).

The **United States deposit fund** comes from a surplus in 1836 of 30 million dollars in the United States treasury, which congress distributed among the States, to be **deposited,** or kept till called for by congress. The share of New York was about 4 millions. It is loaned through the state on mortgages of from $200 to $2,000 (in New York city, from $500 to $5,000) at 5% interest for 5 years.[1] All such mortgages must be submitted to the supervisors at their annual meeting, with full accounts, and this board reports to the comptroller as to the sufficiency of the securities. Though never called for, or likely to be, this is called the United States deposit fund.[2]

For further particulars as to school supervision and school funds, see page 308.

For analysis of county government and tabulated list of county officers see page 2.

[1] 360:188 [2] 413:1897

CHAPTER VIII

THE COUNTY COURT

The shire or county court of England was an important institution. Here were brought the cases that had proved too difficult for the hundred moot or court, and its decisions became features of the common law of England.

Originally representative in their nature, with the growth of the power of land-owners these courts fell under control of the lords; so when the king sent justices to hold courts through the counties, the change was welcomed by the people. The Magna Charta requires a king's justice to hold court four times a year in each county. These king's judges had opportunity to compare the customs in the different parts of the kingdom, and thus to evolve a system of law.

After the king's justices of the peace had assumed control of the hundred court, all the justices of the shire were called together four times a year and organized as a court of quarter sessions (so called because held four times a year), made up of the justices of the peace and the grand jury, which displaced the representative county court; and this was the form of court transferred to this country.

The English county court had both judicial and legislative functions, and when the settlers in Massachusetts increased so rapidly that it was no longer possible for all the freemen to meet, it became the model for the representative assembly established. Though it has lost its judicial functions, the legislature of Massachusetts is still known as the General Court.

At present the county court is the next in rank above the justices court (see page 30). It has **appellate** (from Latin *ad* and *pellere*, to drive to) jurisdiction over cases appealed from the justices court. Its **original** jurisdiction, that is the jurisdiction in cases begun in this court, covers:

(1) civil cases for the recovery of money when the sum claimed does not exceed $2,000 and both parties reside in the county; and

(2) criminal cases not extending to murder and extraordinary crimes.

The **county judge** (1) is the presiding judge, and may by request of the judge of another county hold court in that county.

(2) In counties of less than 40,000 inhabitants he performs the duties of the surrogate.

(3) When commissioners of highways fail to agree he may appoint 3 commissioners to decide the matter[1] (see page 42).

The **surrogate** (from Latin *sub*, under, and

[1] 162:1901.

rogare to ask, to substitute, because these duties were formerly performed by church officers):

(1) takes proof of wills (see page 540) of real or personal property;

(2) grants letters testamentary or administrative (see page 542);

(3) attends to the settlement of the estates of deceased persons;

(4) appoints guardians for children without parents, and directs in the care and management of their estates;

(5) holds surrogate's court when required (218).

The **probate** (from Latin *probare*, to prove) of a will is the proof before the surrogate that it is really the last will and testament of the person deceased.

No county judge or surrogate may hold office after Dec. 31 of the year in which he reaches 70 years of age. Their salaries are fixed by the legislature. In counties having more than 120,000 population, they are not allowed to practise in a court of record or to act as referee. They must be attorneys and counsellors at law (see page 259).

The **district attorney** is the attorney of the county, and must be a counsellor-at-law in the supreme court. He presents to the grand jury complaints made to him accusing persons of crime, questions the witnesses, draws bills of indictment when found (see page 82), and prosecutes the cases in the county and supreme courts.

In some states he is called the prosecuting attorney, or the state's attorney, since it is as the representative of the state and not of the county that he is conducting a prosecution.

If he fails faithfully to prosecute a person charged with bribery he may be removed by the governor (**260**).

His salary is fixed by the supervisors. He is allowed to keep up his private practice, but is not allowed to take a fee for prosecuting a case as district attorney.

It is one of the oldest and most fundamental principles of our system of government that a man is presumed to be innocent till he is proved guilty. He can not be compelled to testify against himself (**112**), and neither district attorney nor judge can decide that he is guilty. The district attorney makes out as strong a case as he can against the accused person, and the judge states what the law is, and whether certain acts would constitute guilt. But whether these acts were committed can be determined only by trial by **jury** (from Latin *jus*, an oath, because a jury is a body of men sworn to inquire into a matter and declare the truth), a body of men impanelled and sworn to inquire into and try any matter of fact, and to render their true verdict according to the evidence brought forward.

This comes from Magna charta (see page 120):

"No man shall be taken, or imprisoned, or disseized, or outlawed, or banished, or any ways injured; nor will we pass upon him, nor send upon him [that is condemn him] unless by the legal judgment of his peers, or by the law of the land."

There have been other methods of determining guilt. Up to 1215, when it was condemned by the church, **trial by ordeal** was practised. If a man was accused before the court by 12 persons he might be thrown into deep water, in which if he sank he was proved innocent. The Normans preferred **trial by battle**, where the accuser and the accused fought it out in the presence of the court, and victory showed which told the truth.

The expression "judgment of his peers" is literally construed in England; in 1901 Earl Russell, a peer, was tried for bigamy by the house of lords, also peers of England. A man must be judged by those of the same rank. In the United States as there are no orders of nobility a man is tried by his peers if he is tried by impartial men.

This right is assumed to every citizen by both the New York (**108**) and the United States (**90**) constitutions. Even in a justices court (see page 30) 12 men are summoned by the constable and 6 are drawn for duty. In higher courts the

process is more elaborate, precautions being taken to secure fair trial.

Trials by jury are required in criminal cases, but in civil cases may be waived by mutual consent (**113**). It is said that when in 1066 William the Conqueror wanted information about his new kingdom he would summon 12 men of the neighborhood to give the facts under oath. It became a practice for the sheriff to call up 12 men to decide between claimants, and so it became the custom to summon 12 jurors for court trials. For centuries this jury duty was the only share ordinary citizens had in important governmental business.

In England a distinction came to be made. The common freemen served on the ordinary jury, thereafter called **petit jury**, and the gentlemen of the county on a **grand jury**, which performed the different function of giving preliminary examination to the person brought before them on **presentment** either discharging him or holding him for trial by a petit jury. This system has come down to us (**112, 117**).

No one can be held to answer for a capital or otherwise infamous crime except on indictment by the grand jury (**112**). Each year the board of supervisors apportions 300 names among the towns of the county in proportion to population. Each supervisor selects the names from his own town

and hands in a list of them, and these lists are deposited in a box in the county clerk's office. Not more than 20 or less than 14 days before the court sits the county clerk in presence of the county judge and sheriff puts his hand into the box and without seeing any of them draws out 24 names. This constitutes the grand jury, list and not less than 16 or more than 23 are allowed to sit.

The justice appoints their foreman, and they appoint a clerk who takes testimony. Only the witness and the district attorney may be present, and they must retire when the ballot is taken.

If a majority finds the accused guilty it is said to **indict** him (from Latin *in* and *dicere*, to proclaim). The district attorney draws up a bill of indictment and the foreman in presence of the jury hands it to the court, whereupon the indicted person unless already in custody is arrested by the sheriff.

The power and responsibility of the grand jury being so great, most citizens are ready to serve, and appointment is considered an honor.

In large cities the conviction of criminals would be difficult were not great care taken in the selection of the grand juries. In New York city the grand jurors are selected in September by a commission consisting of the chief judge of the court of appeals, the mayor, the recorder,

and one judge of the court. This commission selects from the petit jury list 1,000 names, and in the middle of each month 36 names are drawn by the county clerk as above for the following month.

The **trial jury,** often called **petit jury** (from French *petit*, small), is drawn for each case from lists made up once in 3 years by the supervisor, town-clerk, and assessors of the several towns, and deposited in a box in the county clerk's office, as in case of the grand jury. The county clerk draws as above 36 names for each term of court, and these serve for both the county and the supreme court.

For each case the clerk in presence of the court draws out names until 12 satisfactory persons are obtained.

A justice of the supreme court may order the drawing of an additional number of jurors, not to exceed 24; and at a trial term of either supreme or county court the court may order the clerk to draw and the sheriff to notify any number of additional trial jurors the court may think necessary.

In some counties a **commisioner of jurors** receives the lists of persons qualified to serve as jurors prepared by the supervisors, assessors, and town clerks of the towns and cities of the county; examines the names as to qualification; writes

certificates of those entitled to exemption; makes an alphabetical list of those qualified; files the same in his office and in that of the county clerk, and deposits in the jury box slips with the names written upon them. From this box are drawn the names of the trial and grand jurors for the courts of record, and sometimes lists are furnished for lower courts.

On or before Dec. 1 he must return to the county clerk for filing certified copies of the lists prepared by him of the persons liable to serve as trial jurors for the ensuing jury year. He may from time to time strike off the names of a person found by him to be unfit or disqualified.[1]

In counties of 150,000 to 300,000 he is appointed by the justices of the supreme court and the county judge; and in counties except Onondaga containing a city of not less than 60,000 or more than 120,000, by the county judge, surrogate, and county clerk. New York county has a special law.[2]

A **struck jury** is sometimes ordered by the court when the case is intricate or it appears that an impartial trial could not be had by the ordinary jury. In this case the county clerk selects from the jury list 48 names as likely to be impartial, after which the party who obtained the order strikes one name from the list and the opposing

[1] 172:1901. [2] 602:1901.

party another until only 24 names are left. These 24 are summoned and the jury drawn from them as before.

Unanimous agreement of the 12 jurors is required in every case. If they agree the verdict is reported by the foreman. If they cannot agree, they are discharged and the case must be tried over or withdrawn.

It is the custom in New York to keep a jury locked up till it reports. This puts it in the power of an obstinate juryman to compel his 11 associates to remain in confinement till the court chooses to discharge them, and has sometimes enabled him to bring the other 11 around to his side.

In certain cases the judge has the power to set the verdict aside and order a new trial, but this entails expense and delay, and sometimes results in the release of a prisoner undoubtedly guilty.

The **qualifications** of a juror are to be (1) a male citizen of the county;

(2) between 21 and 70 years old;

(3) assessed for personal property to the amount of $250, or owner of real estate to the value of $150, or husband of a woman who is the owner of real estate belonging to her in her own right;

(4) in possession of his natural faculties, and not infirm or decrepit;

(5) of fair character, approved integrity, and sound judgment, and well informed.

Yet the present method of selecting jurors in New York tends to discourage and even to exclude men of intelligence, one of the questions asked being whether the juror has read in the newspapers of the case to be tried, and whether he has formed an opinion. Hence few of the men whose judgment would be most trustworthy desire to serve on a trial jury, and those who accept the duty without trying to shirk it often do it at considerable sacrifice as a duty they owe as citizens.

United States circuit and district courts (see page 278) draw both grand and trial juries from the jury lists of the county where the case is tried.

Persons over 60 years old may claim **exemption** from sitting on juries, as also may postmasters, clergymen, physicians, teachers, editors and reporters on daily journals, members of fire companies or national guards, policemen, locomotive engineers, and some others.

The proceedings in county court are conducted like those in the supreme court (see page 264).

CHAPTER IX

THE VILLAGE

The town and county government already outlined has proved satisfactory for rural communities. But when a large number of people live closely together, as in villages, new necessities arise. There must be adequate sewerage, and this usually requires an artificial water supply; the streets must be lit at night, and patrolled by regular policemen; there must be apparatus to check fires, etc. All these things are expensive, and require skilled supervision. The rest of the town can hardly be asked to tax itself at town-meeting for expenditure by which the small portion of the town is benefited. Hence when a village becomes of considerable size, it asks to be **incorporated** (from Latin *in* and *corporare*, to form into a body); and gets from the legislature a **charter** (from Latin *charta*, a paper, something written and hence definite).[1]

Sometimes a portion of a town is put under a special law with practically village privileges, as "the area or territory known as Sylvan Beach".[2]

The **village** (from Latin *vicus* (see page 23), while a part of the town and with the town a

[1] B i.624. [2] 812:1896; 361:1901.

part of the county, has if thus incorporated some special functions. The government becomes **municipal** (from Latin *munia*, official duties, and *capere*, to take care of),[1] to a considerable degree self-governed. The inhabitants pay their share of the town and county taxes, but they levy further taxes upon themselves for village purposes. They make use of the county court and its officers, but frequently have a special court to take the place of the town justices court.

In New York to be incorporated a village must be an entire town or a territory not exceeding one square mile, not including part of a city or village, and must have a population of not less than 200.[2]

If 25 adult freeholders residing in the territory deliver to the supervisor a proposition to form a village signed by the persons proposing such incorporation and depositing the sum of $50, within 10 days the supervisor must post in 5 public places in the territory, and twice in the newspaper published therein, a notice that the proposition has been received, and that on a given day, not less than 10 nor more than 20 days after such notice, a hearing shall be had. After such hearing the supervisor determines whether the proposition complies with the law, and if so orders an election to decide for or against incorporation.

[1] See page 97. [2] 54.1899.

If the vote is not to incorporate, the fees and expenses of the election are taken from the $50, and the remainder returned to those making it.

New York has 4 **classes** of villages. An enumeration of the inhabitants is taken under direction of the board of trustees in the month of January, 1902, and each fourth year thereafter. On the basis of this enumeration the villages are divided into four classes: the 1st class containing a population of 5,000 or more; 2d class 3,000 to 5,000; 3d class 1,000 to 3,000; 4th class less than 1,000.

For list of the 164 largest villages see page 570.

The **qualifications** for a voter are in addition to those for voting at town-meeting (see page 32), (1) that he has been a resident of the village for 30 days; and (2) for voting upon propositions to raise money, that he be the owner or husband of the owner of property in the village assessed upon the last assessment roll.[1]

The election is held on the 3d Tuesday of March. The terms of office are all 1 year, except that of the trustees, which is 2 years, that of the assessors, which is 3 years, and that of the police justice, which is 4 years.

The following officers are **elected** by the people.

The terms of office begin at noon on the first Monday after the annual election, except in case

[1] 509;1901,

of the police justice, whose term begins on Jan. 1 succeeding his election.

The **president** is the executive officer and the head of the police force. He has no salary.

The **trustees** (in cities of the 4th class 2; of the 3d class, 2 or 4; of the second class 2 to 6; of the 4th class, 2 to 8) are elected at large, that is from the city as a whole; but a village of the 1st class may by vote at a special election decide to elect trustees by wards (see page 98).

The **board of trustees** is made up of the president of the village and the elected trustees. It has the management and control of the finances and property of the village except such as is under the protection of the board of health or boards of commissioners.

It may borrow money temporarily; fix the bonds of treasurer, collector, police justice, street commissioner, and such other officers as it requires to give bonds; establish fire limits, appoint policemen, designate an official paper; must cause a map of the village to be made and kept on file; may give names to the streets, employ an attorney, establish and maintain a village clock and scales, construct drains, establish and maintain a water supply, provide for lighting the streets, establish a scale of licenses, limit the speed of railway trains, etc. It is restricted like cities as to amount of expenditure (see page 100).

Unless the village votes not to impose a poll tax (see page 159), all men between the ages of 21 and 70 residing in the village are liable to an annual poll tax of one dollar, except sailors and soldiers who have lost a leg, exempt firemen, active members of the fire department, clergymen, paupers, idiots, and lunatics.

The annual meeting of the board is held at 7 o'clock on the Monday evening following the annual election. Special meetings may be called by the president, or by any two trustees by written notice.

Trustees have no salary except when acting as inspectors of election or as assessors.

Upon petition of 25 electors 3 **assessors** may be elected at the annual meeting. Otherwise the trustees act as assessors. In villages of the 1st or 2d class the board of trustees may direct that assessors be elected.

The **treasurer** is the chief fiscal officer. He receives the money belonging to the village and pays it out upon orders signed by the president and countersigned by the clerk.

In a village of the 1st or 2d class by vote of the people this office may be filled by appointment of the board of trustees.

The **collector** has duties similar to those of the town collector (see page 39). A village of the 1st class may vote not to have a collector.

The **police justice** has substantially the duties of a justice of the peace (see page 36). Villages may establish or may discontinue this office.

The following officers are **appointed** by the board of trustees.

The board of trustees also fills all vacancies in the offices already mentioned.

The **clerk** has the custody of the corporate seal, and of the books, records, and papers of the village; notifies all officers elected of their election; acts as clerk of the board of trustees and of each board of village officers. He keeps a record of their proceedings and an account of all orders drawn on the treasurer of the village.

This office may be made elective by vote of the village. A village of the 1st or 2d class may have a deputy clerk. Women are eligible to either office.

The **street commissioner** has charge of the construction, improvement, and repairs of the public grounds, squares, parks, streets, culverts, wells, etc. He is ex-officio a member of the police department.

This office may by vote of the village be made elective.

A village engineer, may be appointed if so voted by the village.

Policemen preserve order and arrest offenders against the law.

A **board of health** of not fewer than 3 or more than 7 has the powers and duties established by the public health law (see page 205).

A **municipal board** may be established with the powers of boards of fire, water, light, sewerage, or cemetery commissioners; or these separate boards may be established, with duties corresponding with their names.

In a village of the 1st class, boards of commissioners or the municipal board may be composed of 3 or 5 members, but in other villages such boards must consist of 3 members. The term of office is 3 or 5 years, according to the number of members. Such existing boards may be consolidated or abolished by adopting a proposition therefor at election.

None of these officers have salaries.

The **board of education** usually has the powers of the board of education in union schools, but in the larger villages sometimes has more or less of the extended powers given to boards of education in cities (see page 107).

In villages of only one election district (containing not more than 800 qualified voters), the trustees and clerk act as inspectors; but in villages of more than 800 inhabitants the trustees appoint 2 **inspectors of election** for each election district, of different parties (see page 48).

They may also appoint for each district a poll clerk and a ballot clerk. It is to be noted that the trustees have the power to make ordinances, corresponding with the town by-laws.

Eligibility.—The president, trustees, municipal board, and fire, water, light, sewer, and cemetery commissioners must at time of election and during office be owners of property assessed upon the last preceding assessment roll of the village. This is not required of the board of health.

A person may not hold at the same time any two village offices except those of collector and constable, or water and light commissoner.

We have seen that these multiplied officers are made necessary by new conditions arising from a closer population. As the village grows larger and the population still closer, it approaches the indefinite line between the village and the city. What are the advantages the large village would gain in becoming a city ?

The principal difference between the government of a village and that of a city is that in the former the amount of taxes to be levied is fixed by the people, while in the latter it is fixed by the common council, corresponding with the village board of trustees. It is manifest that in the greater New York it would be impossible for the voters to get together to vote on propositions

to raise money; even in places not too large for this it is much easier to carry appropriations for improvements through a common council than through a village meeting. So in general city government means more latitude of expenditure and more rapid improvements. Bryce says: "The motive for passing from town government to city government in general has been the same everywhere—to acquire a certain readiness of action, and to make more available the credit of the community in order to provide adequately for its own growth."[1]

The principal differences in the powers of the town, the village, and the city, with the more important of the corresponding offiers, are given below.

power	*town*	*village*	*city*
taxation	people	people	council
by-law } ordinance }	people	board	council
officers	supervisor	president	mayor
	board	board	council
	constables	police	police
	collector	treasurer*	treasurer
	justice of peace	police justice*	police justice

[1] B i.624.

*May retain the same name and duties as town officers.

CHAPTER X

THE CITY

As the feudal lords of England spread out their power over the towns, the more thickly populated villages built walls to preserve their liberties, and were called **boroughs** (from the Anglo-Saxon *beorgan*, to defend, a place strongly defended). By annexing outlying townships these boroughs sometimes grew as large as a shire, and had their own sheriff and what corresponded with a county court. The voting inhabitants were called burgesses. Freeman says that the borough "was simply several townships perched tightly together; a hundred smaller in extent and thicker in population than other hundreds."

"The meaning of the word 'borough' has undergone many changes. It seems at first to have denoted a walled town or city, but it was soon applied especially to such of them as possessed some kind of organization for the transaction of the local business. At a later period the term implied the right to be represented in parliament. The term 'municipal borough' was introduced when the larger corporations were reformed in 1835, to denote a place to which

the new powers of self-government was applied, whether such a place were a parliamentary borough or not. It has now became nearly equivalent to '**municipality**', * * * an organization for the self-government of a city or town by means of a corporation empowered generally to maintain peace and order, and to manage the affairs of its inhabitants."[1]

A **city** (from Latin *civitas*, a city) was in England an incorporated town that was or had been the seat of a bishop. Thus while the voters of Oxford were called citizens, the voters of Cambridge were called burgesses, because Cambridge had never been the seat of a bishop. In the United States there is no such distinction, and city is the word usually employed.

The word borough has been introduced in some states, as in Pennsylvania, where it is intermediate between a village and a city. It is used of the divisions of the Greater New York (see page 110).

In the development of the English borough or city a prominent part was played by the **guilds** (from Anglo-Saxon *gild*, tribute, a society where payment was made by members), brotherhoods of tradesmen and artisans who united to protect themselves and their property against the overbearing lords and their lawless retainers. Event-

[1] Enc. Brit. xvii.27. See page 88.

ually the various guilds of carpenters, saddlers, grocers, butchers, etc., formed a united brotherhood and got control of the city government. Only members of guilds were allowed the privileges of citizenship;[1] the **aldermen** (from Anglo-Saxon *ealdor*, an elder) or heads of the various guilds became the head men of the various wards and met in the **guild hall**, which presently became the city hall, sharing the executive power with the **common council**, elected at large by the citizens, as our senate and house of representatives share the powers of congress. In American cities these two bodies are often combined, the **aldermen** forming, usually with the mayor, the **common council**,[2] which is the legislative body of the city, corresponding with the board of trustees of the village, but with enormously greater powers, having the right to appropriate money which in villages is left to popular vote (see page 89).

The aldermen are usually elected one from each ward, partly on the theory that each will look after the interests of his own section, and partly because the party which is in a minority in the city at large may have a majority in certain wards and thus secure representation. But the feeling is growing, on the one hand that aldermen should represent the whole city and not

[1] Enc. Brit. iv.63. [2] B i.596.

parts of it, and on the other hand that city politics should be strictly local and dissociated from national issues. If the man is for the office, not the office for the man, then the most capable men in the city should be chosen, without regard to the accidental circumstance of what wards they reside in.

In some cities, including all the 2d class cities of New York, the **president** of the common council is elected from the city at large, as an additional number of the council. In these cities the president has a salary of $1,000, and the aldermen have $500 in cities of less than 100,000, and $750 in cities of more than 100,000.[1]

"The functions of city governments may be divided into three groups—(*a*) those which are delegated by the state out of its general coercive and administrative powers, including the police power, the granting of licenses, the execution of laws relating to adulteration and explosives; (*b*) those which though done under general laws are properly matters of local charge and subject to local regulation, such as education and the care of the poor; and (*c*) those which are not so much of a political as of a purely business order, such as the paving and cleansing of streets, the maintenance of proper drains, the provision of water and light. In respect to the first, and to

[1] 534:1901.

some extent of the second of these groups, the city may be properly deemed a political entity; in respect of the third it is rather to be compared to a business corporation or company, in which the tax-payers are shareholders, doing, through the agency of the city officers, things which each might do for himself though with more cost and trouble. All three sets of functions are dealt with by American legislation in the same way, and are alike given to officials and a legislature elected by persons of whom a large part pay no direct taxes."[1]

The importance of electing honest and competent men to the common council can not be over-estimated; yet it often happens that men whom no one would trust privately with hundreds of dollars find themselves elected to the council and in control of millions. Their powers are somewhat limited by the provisions of the constitution already quoted (see page 32), with the further restrictions that the total indebtedness must never exceed 10 % of the assessed valuation of real estate, except for bonds to secure water-supply; and that the annual tax shall not exceed 2 % of the assessed valuation (250). But their authority is still enormous.

The reasons that make a government of its own important for the village make it still more

[1] B i. 599. [2] B i. 503, 618.

necessary in the larger and more thickly populated city. The interests involved are enormous, and the character of the administration is of momentous importance to every citizen. Yet at present the government of large cities is exceedingly unsatisfactory, because the control is in the hands of professional politicians, largely through the neglect of citizens to exercise their right to vote, especially at the primaries[1] (see page 176).

In **New York** cities are incorporated by the legislature (**275**). There are no restrictions as to the number of inhabitants. In 1901 Oneida was incorporated with a population of 7,738, though there were in the state at the time 9 villages with a larger population, four of them with more than 10,000 (see table, page 570). Whenever a decided majority of the voters desire it and there is no objection in the county (see page 63) the legislature will usually grant a city charter.

For the purpose of making general legislation practicable, New York cities are divided into 3 **classes** (**276**), the 1st class including those with 250,000 or more inhabitants; the 2d those having from 50,000 to 250,000; and the 3d class the rest.[2] For classified list of cities in New York see page 572.

Election in cities of the 1st and 2d classes oc-

[1] B i.632. [2] Bryce i.581.

curs at the general state election in the odd-numbered years, so as to dissociate local from state and national elections.[1] The term of office is 2 years.

There is great variety in the number and in the naming of city officers; the list of the officials and employes of the Greater New York published Jan. 31, 1901, contains 399 newspaper pages,[2] yet even this is said to be incomplete, and it is estimated that the city has 50,000 employes to whom it pays 50 millions a year in salaries. Syracuse paid in 1900 $902,079.61 in salaries, besides $205,467.43 for wages to day laborers. The following are the most important officers.

The **mayor** (from Latin *major*, greater) is the principal executive officer and the head of the city government, corresponding with the president of the village. The modern tendency is to increase his powers, giving him a longer term of office, and entrusting to him the appointment of many of the other city officers.

Our forefathers were afraid of such one-man power as had been exerted by the governors of the colonies, and shrank from giving extensive power to any individual. But experience has shown that when city charters divide up the power they divide up also the responsibility, and when evil results, each branch of the govern-

[1] B i.598. [2] The City Record, Jan. 31, 1901.

ment throws the blame upon the rest.[1] Few mayors dare face public opinion in the appointment of men as unworthy as may easily slip through the machinery of a popular election, and a mayor who knows that all the praise or all the blame will be his, has every incentive to make his administration an honorable one. Moreover, the greater the responsibility, the greater care there will be in electing to the office; so the tendency to increase the mayor's powers seems altogether healthful.[2]

Over all the acts and ordinances of the common council, the mayor has the right of **veto** (Latin, I forbid), and a measure so vetoed can not become a law unless repassed by the common council by a two-thirds vote. Much unwise legislation is prevented in this way, even when the political opposition to the mayor in the common council is much larger than the two-thirds required to pass the bill over his veto; for the veto calls public attention to the evils of the bill, and often creates public sentiment against it which the council does not dare oppose.[3]

In New York the attempt has been made to give him also a sort of veto power over legislation. When a bill relating to a city has been passed by the legislature, the house in which it originated must at once transmit a certified copy

[1] B i.614. [2] B i.603, 627; Hadley, 80. [3] B i.629.

to the mayor of the city, to be returned within 15 days with statement whether or not the city accepts it. If accepted it goes like other bills to the governor. If returned marked not accepted or if not returned, it must again go before the legislature, and be passed by both houses before going to the governor (276–8). Compare page 242.

It rests with him, as the chief executive office, to provide for the public peace, to quell riots, and, if necessary, to call out the militia. He often exerts, in practice, some discretion as to the enforcement of the law; he may, for instance, put in force Sunday closing acts or regulations, or omit to do so.[1]

In the smaller cities the mayor usually serves without pay. In the larger cities he sometimes has a considerable salary, as $4,000 in Syracuse and $15,000 in New York.

The **city attorney,** or **corporation counsel,** acts as legal adviser to the mayor, common council, and other officers, and prosecutes and defends suits in which the city is interested.

The **treasurer** and **assessors** have duties similar to those in villages.

The assessment rolls must be open Sept. 1–15 for inspection at the office of the city clerk, after which each is delivered to the supervisors of the tax district embraced therein.[2]

[1] B i.596. [2] 358:1901.

In some cities there is a **comptroller** (sometimes spelled *controller*, from French *contrôle*, a counter register), who is the financial guardian of the city. He is a member of the board of estimate and apportionment, where there is one, and his approval is required before the payment of bills against the city.

The **police justice** has corresponding powers and duties with the police justice of the village (see page 92). Some cities instead retain justices of the peace; some have a **city judge** and a **chamberlain** (in New York he is a fiscal officer, see page 112); some make of the police justice and two or more of the aldermen a **board of magistrates.**

There is sometimes a **municipal court,** for the trial of civil cases alone.

Whatever the name of the court, it belongs to those named in the constitution (224) as "inferior local courts of civil and criminal jurisdiction"; hence it is not a court of record (that is, one whose decisions are kept and used as precedents), and may not have a greater jurisdiction than the county court.

A **probation officer** is appointed by the justices of criminal courts to inquire into the antecedents, character, and offence of persons over the age of 16 arrested for a crime within the jurisdiction of the court. The court may place the criminal

on probation under charge of the probation officer, suspending sentence.[1]

The **city clerk** is sometimes elected and sometimes appointed. His duties are essentially those of the village clerk (see page 92).

There is sometimes a **street commissioner,** perhaps called the **superintendent of street repairs;** and in the larger cities there are often separate superintendents of street-cleaning, of sidewalks, etc. There may be a general **commissioner of public works.**

A **bureau of engineering** may take the place of the village engineer (see page 92), though often there is a city engineer.

Besides a **chief of police** and various assistants, there may be a **police commission,** or a **commissioner of public safety** in general charge of police matters.

Sometimes it is proposed that this officer or commission be appointed by the governor, the legislature not feeling confidence in local city control. An effort of this kind in the New York legislature of 1901 was unsuccessful.

The **board of health** has power similar to that in villages (see page 93), but somewhat more extended.

There could hardly be a municipal board (see page 93) in cities, as the duties of the various

[1] 372:1901.

bureaus are too extended. These differ in the various cities, but often include a **bureau of public buildings and grounds**, a **water bureau**, etc.

In cities of the 2d class there is a **board of contract and supply** which purchases all the supplies for the city.

There is sometimes a **commissioner of charities and correction.**

A **sealer of weights and measures** is required in 2d class cities. He is appointed by the mayor for 2 years, and is removable by the mayor. He has the duties of the town sealer of weights and measures, supervises the weighing of coal, etc.[1]

The **board of education** has in general the powers of the boards of education of union schools (see page 57), but usage differs on the following points.

(1) The members may be elected; or they may be appointed, usually by the mayor. The latter method usually secures the best results. The board of education of New York city has always been appointive, and it has always been free from scandal; even when the Tweed ring was robbing New York city, J. G. Holland, the author, was president of the board of education.

Several cities of New York have a board of 7 members, each appointed for 7 years by the

[1] 479:1901.

mayor. This seems to be thus far the best system devised for the control of schools.

(2) When elected, the members may be elected "at large", that is from the whole city; or by wards. The former method is in every way preferable (see page 98).

(3) The board of education sometimes has power to fix the amount to be raised by tax, but usually must refer it to the common council. There seems no good reason for this. The board of education is usually made up of men quite as competent and trustworthy as the aldermen.

(4) The board of education sometimes retains all its powers, making the superintendent merely a clerk to carry out its enactments. The tendency is however greatly to extend the superintendent's responsibility, empowering him especially to select, transfer, and discharge teachers.

(5) As a rule members of boards of education have no pay, but in Rochester they receive a salary of $1,200.

In cities and in villages of 5,000 inhabitants teachers to be employed in grades below the high school must either (1) hold (*a*) a state certificate, (*b*) a normal diploma, or (*c*) a college-graduate certificate; or (2) be a graduate of an approved high school (see page 322) and of a training school or class (see page 313); or (3) have 3 years experience and a valid certificate (see page 55).

For high schools, the teacher must either have one of the qualifications in (1) above, or (*d*) a uniform 1st grade certificate; or (2) be a graduate of an approved college, with (*a*) a uniform certificate of any grade, or (*b*) graduation from a pedagogical course approved by the superintendent (see page 314).

In large cities much of the work of boards of education, as of boards of aldermen, is done by committees. The dangers of this are spoken of on page 248.

There is considerable limitation as to the power of appointment and removal of city officers through the regulations of the civil service (see page 388).

CHAPTER XI

THE GREATER NEW YORK

By a law passed in 1897 the cities of New York, Brooklyn, and Long Island city, with all of Kings and Richmond and part of Queens counties (see map, page 574), were made one great city, called **New York**, but usually referred to as The Greater New York. By the census of 1900 this city had a population of nearly $3\frac{1}{2}$ millions, making it second only to that of London, and nearly half that of the entire state. It pays $\frac{3}{5}$ of the state taxes, and elects $\frac{2}{3}$ of the legislature. So enormous a municipality creates many new problems, and the charter as revised in 1901[1] fills an entire volume of the statutes of that year.

It is divided into 5 **boroughs**, electing each the number of assemblymen given in parentheses: Manhattan ($33\frac{1}{2}$), The Bronx ($1\frac{1}{2}$), Brooklyn (21), Queens (2), and Richmond (1) (see map, page 574). As a rule each assembly district elects an **alderman**, but in Manhattan the 21st, 23d, and 31st assembly districts have each 2 aldermen, and its half 34th district has an alderman, making 37; the 35th district of the Bronx has 4, with 1 for

[1] 466:1901.

its half of the 34th, and 2 for Chester, the annexed district, in the 1st and 2d Westchester assembly districts, making 7; the 7th district of Brooklyn has 2 aldermen, making 22; Queens has 4, and Richmond 3, making altogether a board of 73 aldermen.

The aldermen are elected by the people for 2 years at a salary of $1,000. The only qualification required is that the candidate be a citizen of the United States and a resident of the ward. Heads of departments (see page 112) are entitled to a seat in the board of aldermen, and to a part in the discussion, but not to vote. They must attend when required to do so by the board.

The president receives $5,000, and is acting mayor during the mayor's absence or disability.

To prevent hasty action and to inform the public, ordinances that involve the spending of money, public improvements, or the granting of franchises, can be passed only by unanimous vote until at least 5 days after an abstract of the proposed measure has been published in The City Record, the official city newspaper.

The board appoints the **city clerk** for 6 years, at a salary of $7,000, with the powers of a county clerk; and on recommendation of the board of estimate, which it may reduce, fixes the salaries of the other employes of the city except teachers and day laborers.

The **mayor,** besides the usual duties of the office (see page 102), appoints[1] the heads of 13 of the 15 departments of the city government, and may remove them. These departments are the following (§ 96):

1, finance; 2, law; 3, police; 4, water supply, gas and electricity; 5, street cleaning; 6, bridges; 7, parks; 8, public charities; 9, correction; 10, fire; 11, docks and ferries; 12, taxes and assessments; 13, education; 14, health; 15, tenement houses.

The mayor may be removed by the governor.

To pass a measure over his **veto** (see page 103), a $\frac{2}{3}$ vote is required, and in case the measure involves the expenditure of public money, the creation of a debt, or the laying of an assessment, a $\frac{3}{4}$ vote is required. His veto of a franchise is final.

The **comptroller,** at the head of the department of finance, is elected by the people for 2 years, at a salary of $15,000.[2] He may be removed by the governor, like a sheriff (**260**).

There is also a **chamberlain** appointed by the mayor at a salary of $12,000, who acts as county treasurer (see page 69), and performs corresponding duties for the city.

The **superintendent of schools,** at the head of department of education is elected by the board

[1] § 118. [2] § 97.

of education for 6 years, at a salary of $8,000. There are also 8 associate superintendents and 26 district superintendents, appointed by the board of education. This board consists of 46 members, 22 from Manhattan, 4 from the Bronx, 14 from Brooklyn, 4 from Queens, and 2 from Richmond, and members are appointed by the mayor for 5 years, to serve without pay. There is also in each district a **district board,** appointed by the president of the borough. Teachers are appointed by the board of superintendents from an eligible list furnished by the **board of examiners,** and are assigned to districts as vacancies occur.

There is for each borough a **president,** elected by the people of the borough for 2 years, at a salary of $5,000 in Queens and Richmond and $7,500 in the other boroughs. He has charge of the streets, sewers, bridges, and most of the public buildings; and in Queens and Richmond of the street cleaning.

The 5 borough presidents, with the president of the board of aldermen, the comptroller, and the mayor, constitute the **board of estimate and apportionment,** which receives the estimates by the various departments of money needed for the coming year, makes up a statement of the amounts approved, and submits it to the board of aldermen. If approved by the board of aldermen, it becomes the legal amount to be raised.

On this board the presidents of The Bronx Queens, and Richmond have 1 vote each; the presidents of Manhattan and Brooklyn 2 votes each; the mayor, the comptroller, and the president of the board of aldermen 3 votes each, making 16 votes altogether.

The city is divided into 25 **districts of local improvements,** corresponding closely with the 20 senate districts (see map, page 579), in each of which there is a **local board,** composed of the aldermen within the district, and presided over by the borough president. This board may open streets, establish parks, and construct tunnels and bridges, where part of the expense is borne by owners of adjoining property; but such plans must be approved by the borough president, and if the charge imposed on the city is $2,000, by the board of estimate and apportionment; if it be $500,000, by the board of aldermen also.

New York county has no county court, but instead divides its functions (see page 76) between a **city court,** with 7 judges, elected for 10 years at a salary of $10,000, with jurisdiction over civil cases where the amount does not exceed $2,000; and a **court of general sessions,** with a **recorder,** a **city judge,** and 3 **justices of sessions,** all elected for 14 years, at $12,000, which has jurisdiction over all crimes, including murder.

There are two inferior courts in the Greater

New York. The **court of special sessions** has 10 judges appointed by the mayor for 10 years, with salaries of $9,000 for the 5 in the 1st division, Manhattan and the Bronx, and $6,000 for the 5 in the 2d division, the rest of the city. To constitute the court 3 of the 5 judges must sit, and 2 must concur to make a decision. The jurisdiction of the court is over minor offences, such as misdemeanors, and others not dependent on indictment (see page 82).

In Manhattan and the Bronx 12 **city magistrates** are appointed by the mayor for 10 years, with a salary of $7,000; in the rest of the city 15 are elected for terms of 6 years at salaries of $6,000 in Brooklyn and $5,000 in Queens and Richmond. In each division the magistrates constitute a **board of magistrates,** with 20 districts, in more of which a magistrate is in daily attendance to try petty offences and commit accused persons, performing the functions of a justice of the peace in criminal cases (see page 30).

The functions of a justice of the peace in civil cases are performed by the **municipal court,** which is held in each of the 23 districts by a justice elected by the voters of the district for 10 years at $5,000 in Queens and Richmond and $6,000 in the other boroughs. It has jurisdiction in civil suits where the amount involved does not exceed $500.

The difference in salaries of the corresponding officers in different boroughs is provided for in the law (§56):

"Salaries need not be uniform throughout the several boroughs, but may, in the discretion of the board of estimate and apportionment, be made to consist of two elements: First, remuneration for work done, which shall be the same throughout all the boroughs for positions of like character; second, an additional sum based upon an estimate of the prevailing rentals and expenses of living in the borough where the services rendered are performed, and which may vary in the several boroughs."

Teachers, however, receive salaries uniform throughout the city.

Bryce says there is no denying that the government of cities is the one conspicuous failure of the United States. The deficiencies of the national government tell but little for evil on the welfare of the people. The faults of the state governments are insignificant compared with the extravagance, corruption, and mismanagement which mark the administrations of most of the great cities.[1] He says elsewhere that city governments begin to be bad when the population begins to exceed 100,000, and includes a large proportion of recent immigrants.[2]

[1] B i.608. [2] B ii.158.

New York has held its share of bad government, but the election of 1901 showed that this was not due to the laws of the state or of the city, for the control passed absolutely from the party that had held it into non-partisan control, under those who promised to give it an honest, business-like, and efficient administration.

For tabulated list of principal city officers see page 3.

CHAPTER XII

THE STATE

The town, the county, the village, the city have all been treated as parts of a greater whole. Each exercises certain powers, but the powers are all delegated from a higher authority, which may alter or extend or abridge these powers. We come now to this higher power, the sovereign **state** (from Latin *status*, a standing).

The sovereignty is in the state, that is in the people that constitute the state; not in the persons who happen to be at any time the officers of the state. The state is, like the town, the county, the village, and the city, a **commonwealth** (a body politic united for common well-being); but it differs from them in having independent authority of its own—not delegated or subject to alteration by some authority above, but inherent, and defined by a **constitution** (from Latin *con* and *statuere*, something firmly established). The United States has been well called an indestructible union of indestructible states; and this indestructibility depends largely upon the constitutions of the United States and of the several states, by which it is made secure.

The constitution of a country is the body of rules or laws which determine the form of its government, and the respective rights and duties of the government towards the citizens and of the citizens towards the government,[1] embodied in written documents, or implied in the institutions and usages of the country. In the latter sense it might be said that every permanent government has a constitution, that is an understood method of working; but its common use implies that the method of working is fixed, not dependent on arbitrary will of the ruler. An absolute monarchy is a government without a constitution; a limited monarchy, a government with a constitution.

A constitution is the political law, established by the people as a body politic (see page 28). It is the fundamental law, because it is the foundation of all other laws. It is an agreement between the entire community and each of its members, establishing laws for the common good.

When the Spaniards were trying to protect themselves against Queen Isabella by a constitution, Guizot said: "The great use of a constitution is to make good sovereigns out of bad men and women."

England has always been a limited monarchy. The king has never been able to act alone, but

[1] B i.350.

only in connection with a council. Under the Anglo-Saxon kings, an assembly of the wise men had power to impose taxes, and to raise troops, to direct church affairs, and to care for the state in general, while county courts administered justice.

The Norman kings made unjust exactions. Each king on coming to the throne granted a charter promising to respect ancient rights; but none of these charters were carried out.

The First Bulwark of English Liberty

In 1215 the barons compelled King John to sign **Magna charta** (the great charter), establishing a fixed mode of administering justice, and promising every man accused the right of trial by jury.

In the early part of the 13th century the kings, who found the nobles inclined to resist exactions, thought they could secure taxes more easily by enlarging the council; so they began to summon **knights of the shire** from the various counties, to be chosen by the smaller land-owners as representatives; and to invite some of the wealthy towns to send **borough members** to the assembly.

During the reign of Edward III (1327–1377), the limiting body came to consist of three parts, (1) the barons and bishops; (2) the knights of the shire; (3) the borough members. These last two united to form **the house of commons,** while

the first constituted **the house of lords,** and both together made up **parliament.**

For a time the house of commons had little power except to assent to taxation; if it had new measures to propose it presented them to the king through its presiding officer, for this reason called **the speaker.** Presently it began to make its wishes into laws, and to present them to the king for his approval.

Under Henry VII and Henry VIII the authority of the king became nearly absolute. If parliament failed to authorize taxes the king raised them by illegal modes of taxation, and there was no security of person. Hallam says: "A single suspicion in the dark bosom of Henry VII, a single cloud of wayward humor in his son, would have been sufficient to send the proudest peer of England to the dungeon and the scaffold."

Under James I the house of commons secured the right to judge of the election of its own members, and refused to raise taxes unless grievances it complained of should be redressed.

The Second Bulwark of English Liberty

In 1628 it extorted from Charles I the **Petition of right,** granting (1) that no person should be compelled to pay a tax not levied by parliament; (2) that no freeman should be imprisoned except by legal process; (3) that soldiers should not be

quartered upon the people; (4) that people should not be subjected to martial law.

For 11 years Charles governed without a parliament; and when in 1640 he summoned the **Long parliament**, the majority were Puritans. It at once passed two laws and compelled the king to sign them: (1) that it should not be dissolved without its own consent; (2) abolishing the court of the star chamber, a body of judges wholly under the king's control. When parliament further demanded the control of the army the king resisted, both parties took up arms, the king was defeated, and in 1649 he was tried and executed for treason.

The house of commons then abolished the house of lords, and vested the supreme power in a council of 40 members. Cromwell dissolved the parliament by force, and got from its successor the title of lord protector, ruling absolutely till his death in 1658. His son succeeded him, but had not his father's strength of character, and in 1660 monarchy was restored under Charles II.

The government was now reëstablished on its old basis, and parliament was once more submissive to the king. James II tried to make the royal power as absolute as under the Tudors, claiming the right to set aside its acts, to interfere in the election of its members, and to repeal the habeas corpus act, passed under Charles II.

THE THIRD BULWARK OF ENGLISH LIBERTY

This exasperated the people, and James was compelled to fly from the country, his daughter Mary and her husband William of Orange succeeding to the throne. Parliament now passed the **Bill of rights**, declaring it illegal for the king to suspend the laws, or to levy money or keep a standing army without grant of parliament. It declared the right of the people to petition the king; to bear arms in their own defence; to be exempt from excessive bail and fines, and from cruel and unusual punishments. It declared that parliaments should assemble often, that the election of members should be free, and that there should be freedom of speech in debate.

This practically fixed the English constitution in the form it bears to-day.

So far as it is embodied in documents, the English constitution consists mainly of Magna Hcharta, the Petition of rights, the abeas corpus act, and the Bill of rights. In this sense the Magna charta might be called the first written constitution. But these have only the force of statutes. Any one of them may be repealed by parliament. Bryce says (i.237, 350; ii.275):

"What are called in England constitutional statutes, such as Magna charta, the Bill of rights, the Act of settlement, the Acts of union

with Scotland and Ireland, are merely ordinary laws, which could be repealed by parliament at any moment in exactly the same way as it can repeal a highway act or lower the duty on tobacco. The habit has grown up of talking of the British constitution as if it were a fixed and definite thing. But there is in England no such thing as a constitution apart from the rest of the law; there is merely a mass of law, consisting partly of statutes and partly of decided cases and accepted usages, in conformity with which the government of the country is carried on from day to day, but which is being constantly modified by fresh statutes and cases."

"In England the ancient constitution is always under repair."

"A constitution of this kind, capable at any moment of being bent or turned, expanded or contracted, may properly be called a flexible constitution."

Fisher says:[1]

"Parliament is thus a convention to amend the constitution, duly appointed, always in existence, and always competent to entertain proposals for needed alterations, with full authority to decide them. * * * It is a remarkable fact that, in conservative England, so steadfast in adhering to ancient usage, the power to make

[1] Trial of the constitution, p. 30.

changes is always ready to act, without question or form or delay, and the organic law is thus pliable and responsive to the wishes of the people; whilst in democratic America, innovation is guarded against with such jealous care that it is doubtful whether the means provided by law for making needed changes can ever be employed."

Bryce says (ii.258): "In England, parliament is the nation, not merely by a legal fiction, but because the nation looks to parliament only, having neither reserved any authority to itself nor bestowed any elsewhere. In America, congress is not the nation, and does not claim to be so."

In America constitutions have always taken the written form. They are derived from the **charters** kings had been led to grant.

It is said that the basis of charters was the address of William the Conqueror to the authorities of London, in which he said: "I will that every child be his father's heir, after his father's day; and I will not endure that any man offer any wrong to you." This was followed by written guarantees known as the charters of English towns, granting rights and privileges, and often prescribing a form of government. Bryce (i.414, 448) traces the history of charters back through the trade guilds of the middle ages to the days of imperial Rome.

These were highly prized, and the American colonies learned to depend for a guarantee of their rights upon written charters. Plymouth was a mere voluntary association until in 1691 it became a part of Massachusetts under a charter granted by William III, in place of the charter revoked by James II.[1]

The charter granted in 1606 by King James to the London and Plymouth companies contained a guarantee, "forever irrevocable, unless by consent of both parties, that became the great bulwark of colonial rights and liberties in the contests of a later day." It said:

"Also, we do, for us, our heirs, and successors, declare, by these presents, that all and every the persons being our subjects, which shall dwell and inhabit within every and any of the said several colonies and plantations, and every of their children and posterity, which shall happen to be born within any of the limits and precincts of the said colonies and plantations, thereof, shall have and enjoy all liberties, franchises and immunities of free denizens and natural subjects within any of our other dominions, to all intents and purposes, as if they had been abiding and born within this our realm of England, or in any other of our dominions."

Two of the original 13 colonies, Rhode Island

[1] B i.458.

and Connecticut, after beginning as unauthorized associations obtained direct charters. These charters permitted the colonies to choose their own governor, to elect their own legislature, and to establish courts of justice, with only the restriction that no law should be passed that was contrary to the laws of England. These charters proved so satisfactory that Connecticut was governed by hers, instead of by a constitution, till 1818, and Rhode Island till 1842.[1]

It was because George III assumed to tax the colonists in violation of their charters and of what they believed to be the English constitution that the revolutionary war broke out.

In 1639 the free planters of Connecticut had met at Hartford and adopted a **constitution,** the first on record, and many of its features were continued in the charter granted in 1662. In 1671 the New Plymouth colony published a revision of the laws under the title, "General Laws and Liberties of New Plymouth Colony", which had many of the features of the modern constitution. In 1669 John Locke prepared his "grand model", "The fundamental constitutions of South Carolina", which proved impracticable and in 1693 was set aside.[2]

When the revolution had made the American colonies independent of England, the power

[1] B i.416. [2] B i.445.

rested absolutely in the hands of the people,[1] and the continental congress advised the colonial governments to form permanent governments. Accordingly each colony, except Connecticut and Rhode Island, adopted a **written constitution,** ordaining the methods under which it was to govern itself.

"A state constitution is not only independent of the central national government (save in certain points already specified), it is also the fundamental organic law of the state itself. The state exists as a commonwealth by virtue of its constitution, and all state authorities, legislative, executive, and judicial, are the creatures of, and subject to, the state constitution."[2]

"The people and the government must be clearly distinguished. The people make the constitution and the government follows it."[3]

These constitutions were based largely upon the charters.[4] All of them provided for the three departments of government, executive, legislative, and judicial. Usually the colonial assembly became the house of representatives; a new upper house was elected in place of the governor and his council, who had formed the senate; and a judiciary was created. All contain a "bill of rights" (see page 136); and various minor provisions define the boundaries of the state, pre-

[1] B i.429, 450. [2] B i.420. [3] B i.348. [4] B i.414.

scribe qualifications of voters, and establish requirements for schools, corporations, etc. The first New York constitution quoted the act of the continental congress recommending the colonies to form governments of their own, and the entire Declaration of Independence.

Massachusetts still lives under her constitution of 1780, which has indeed been amended at various dates, yet not to such an extent as to efface its original features.[1]

Bryce says (i.299):

"All the main features of American government may be deduced from two principles. One is the sovereignty of the people, which expresses itself in the fact that the supreme law—the constitution—is the direct utterance of their will, that they alone can amend it, that it prevails against every other law, that whatever powers it does not delegate are deemed to be reserved to it, that every power in the state draws its authority, whether directly, like the house of representatives, or in the second degree like the president and the senate, or in the third degree, like the federal judiciary, from the people, and is legally responsible to the people, and not to any one of the other powers.

"The second principle, itself a consequence of this first one, is the distrust of the various organs

[1] B i.440.

and agents of government. The states are carefully safeguarded against aggression by the central government. So are the individual citizens. Each organ of government, the executive, the legislature, the judiciary, is made a jealous observer and restrainer of the others. Since the people, being too numerous, cannot directly manage their affairs, but must commit them to agents, they have resolved to prevent abuses by trusting each agent as little as possible, and subjecting him to the oversight of other agents, who will harass and check him if he attempts to overstep his instructions."

These state constitutions have served as models for later state constitutions and for the United States constitution, but the recent tendency has been to extend the suffrage and other democratic features[1] and also to go into much greater detail, and to fix in this unyielding law such matters as private law, education, corporations, municipal indebtedness, etc.[2]

Thus the Illinois constitution of 1870 requires warehouse keepers in cities of 100,000 or more to make a weekly statement of the contents, and to keep a copy of the statement posted in the warehouse on which shall be noted each day the changes in the stores. Other state constitutions forbid duelling, and, like that of New York (**120**),

[1] B i. 439. [2] B i. 428, 438.

lotteries. The provisions regarding slavery in the first state constitution of Missouri led to the famous Missouri Compromise of 1820. Several states have constitutional provisions forbidding or regulating the sale of intoxicating liquors.[1] The Oregon constitution of 1857 forbade a Chinaman to own or work a mining claim.

Such constitutional provisions do not give the state additional power, but they limit the power of the legislature.[2]

Bryce says (ii.395):

"The people have more direct control over legislation through a convention making a constitution than they have over the action of a legislature. The delegates to a convention go straight from the election to their work, have not time to forget, or to devise means of evading, their pledges, are less liable to be 'got at' by capitalists. They constitute only one house, whereas the legislature has two. There is no governor to stand in the way with his veto."

And again (i.421): "A state constitution is really nothing but a law made directly by the people voting at the polls upon a draft submitted to them. The people of a state when they so vote act as a primary and constituent assembly, just as if they were all summoned to meet in one place, like the folkmoots of our Teutonic

[1] B i.423. [2] B i.250, 428, 438, 439.

forefathers. It is only their numbers that prevent them from so meeting in one place, and oblige the vote to be taken at a variety of polling places. Hence the enactment of a constitution is an exercise of direct popular sovereignty to which we find few parallels in modern Europe, though it was familiar enough to the republics of antiquity, and has lasted till now in some of the cantons of Switzerland."[1]

The differences between a provision of the constitution and a statute law (a law passed by the legislature), may be thus summarized:

The constitution	*A statute law*
1. Supreme.	1. Must conform to the constitution.
2. Made by delegates chosen by the people for that purpose.	2. Made by the legislature and the executive.
3. Can not be repealed, but may be made obsolete by amendments.	3. May be repealed easily and quickly.
4. Can be amended only by complicated process occupying much time.	4. May be amended easily and quickly.
5. Can not be set aside by the courts.	5. Is rendered null and void if pronounced by the courts unconstitutional.

[1] B i.417, 448, 456.

New York has had 4 constitutions, those of 1777, 1821, 1846, and 1894. The last is still in force. That of 1777 was adopted by the convention alone; the others have been ratified by the people.

In **1777** a convention of delegates chosen by the 12 counties met at Kingston and on April 20 adopted the first state constitution.

It was more liberal in its provisions than that adopted at the time by any of the other twelve states. "It guaranteed absolute freedom of religious worship to every citizen." Except in two particulars, its provisions have been mostly retained. (1) A **council of appointment** was created, consisting of one senator from each district, appointed by the assembly, and presided over by the governor, who had a casting vote. This council appointed all the judiciary officers, from the chief justice to the justice of the peace.

A convention was called in **1801,** but not a vote could be obtained for the abolition of this feature, which had proved a useful part of the machinery of the party in power. The convention of **1821** abolished this council, but retained its powers, dividing them between the governor and senate, and the two houses in joint session. The revision of **1846** made all judges and justices of the peace elective by the people.

(2) A **council of revision** was also created, con-

sisting of the governor, the chancellor, and the judges of the supreme court, to which all bills passed by the legislature had to be submitted before they could become laws. This council was abolished by the revision of 1821, and its powers transferred to the governor (see page 241).

Minor changes that have since been made are treated under the topics concerned. The constitution drafted by the convention of **1867** was mostly rejected by the people, and that drafted by the convention of **1894** is given in full (page 628). All references to this constitution are in heavy-faced figures referring to the paragraphs as numbered, and should always be compared with the original. Numbers below 110 refer to corresponding sections of the national constitution, and are cited for convenience of comparison.

Amendments may be made at any time. They must first be passed by concurrent resolution of both houses of the legislature, and again succeeding the next election of senators; after which they must be submitted to popular vote, and if a majority of those voting approve, they become a part of the constitution (**287**). Thus the amendment marked **169** a was adopted by the legislature in 1899, and again, after the election of senators in 1900, by the legislature of

1901. It was then submitted to the people at the general election of 1901 and adopted.

The present constitution requires that at the general election in 1916 and every 20th year thereafter the question whether there shall be a convention to revise the constitution shall be submitted to the voters, and if a majority favor, such a convention shall be called (288).

The convention of 1894 which adopted the present constitution was made up of 3 delegates from each senate district and 15 delegates at large, and the members received the salary and mileage of members of assembly (see page 223). It met in Albany May 8, and adjourned after proposing the constitution Sept. 29. The constitution in its present form was adopted by the people at the general election, Nov. 6. The changes made are shown in the dates at the end of each section.

CHAPTER XIII

THE BILL OF RIGHTS

The constitution begins by imposing certain limitations on the power given to the government of the state, applying to the legislative, the executive, and the judicial departments. These are a numeration in more detail of the "inalienable rights" of the Declaration of Independence (see page 591), of which those there specified are life, liberty, and the pursuit of happiness. From the statute passed in the time of William and Mary (see page 123) this part of the constitution is commonly called the **bill of rights.**[1] It is found in most state constitutions, and is embodied in amendments to the federal constitution (84–92).[2]

A **right** is a just claim. A **natural right**—as the Declaration of Independence calls it, an inalienable right—is a right inherent in all.

A **personal right** belongs to one as an individual, such as security, liberty, religious freedom, acquirement of property, and may be civil or political.

A **civil right** belongs to one as a member of a community, such as government protection.

[1] B i.422. [2] B i.357.

A **political right** belongs to one as a citizen, and in a republic involves his share in the government as to vote. Political rights come from a constitution; without this, political rights do not exist (see page 119).

Rights may be **forfeited.** A man's first right is to life, but he may lose this right if he takes the life of another. He has a natural right to liberty, but he may forfeit it if he wantonly transgresses the liberty of others, as by assault or theft. Rights may be lost through no fault of the person, as when a man loses his liberty if he becomes insane and therefore dangerous.

But this forfeiting of these rights must be by due process of law (**117, 88**), which Daniel Webster defines as "the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial."

(1) Personal Rights

Security (from Latin *se* and *cura*, without care) is provided for by several restrictions upon the government, especially by the provision that the writ of habeas corpus shall not be suspended except when public safety may require it, and only in cases of rebellion or invasion (**115, 45**).

A **writ** is a written instrument, issued by a judge having competent authority, commanding the person to do or not to do some action speci-

fied. A writ of **habeas corpus** (Latin, you may have the body) is directed to the officer who detains a person, commanding him to produce the person at a certain time and place and show reason why he detains him. Unless just and legal course is shown the person is discharged.

This ensures that every accused person shall know the exact nature of the charge against him, and prevents illegal detention or imprisonment. Sometimes it enables parents to get control of their children, and relatives to secure the release of persons confined under allegation of insanity.

The suspension of habeas corpus in times of rebellion or invasion may become a necessity. On April 27, 1861, President Lincoln ordered it suspended,[1] and on March 3, 1863 congress took the same action. It has never been suspended by the state of New York.

The writ is granted in the discretion of the judge, and only upon affidavit giving the facts and stating that the detention is contrary to law.

Federal judges often grant the writ to persons imprisoned under state authority for violation of federal law, and state judges have sometimes released federal prisoners.

Security requires that the citizen be protected against unreasonable searches and **seizures**, either

[1] 3 i.50.

of person, or of houses, papers, and effects; and the national constitution forbids that these shall be made except upon oath of probable cause, particularly describing the place to be searched and the person or thing to be seized (87).

To search a man's person or his home is a personal indignity, and warranted only upon strong presumption of guilt. If my watch is stolen and I am confident another man has it in his pocket I may appeal to a policeman to search him; or if I am sure the man has it in his house, I may make affidavit before a magistrate and secure a search-warrant by which some officer will search the house. But I am responsible if the complaint or affidavit is on insufficient grounds; and there can be no searching on general principles, to discover what may happen to be found.

All that can be asked of a person is to obey the laws that exist. If an act which he does legally to-day may by a law passed to-morrow be made illegal, he would have no security.

Hence the provisions in the national constitution (**46, 51**) forbidding the passage of any law which is **ex post facto** (Latin, after the act), a law declaring an act punishable that was not punishable at the time it was committed.

A law that increased the penalty for a crime would be *ex post facto* if it made the penalty retro-active. Thus from 1801 to 1820 to engage

in the slave-trade was punishable by fine and imprisonment; in 1820 it was made punishable by death. Had the latter law been made to apply the penalty to offences prior to 1820, it would have been *ex post facto*, and unconstitutional.

The constitution does not allow any **bill of attainder**, a legislative act inflicting capital punishment for crime without judicial trial. This would be an encroachment on the judiciary.

While congress may not convict of **treason** it may declare what the punishment shall be (**71**), but no attainder of treason shall work **corruption of blood** or **forfeiture** except during the life of the person attainted.

In England such acts of parliament were common, and not only did the person attainted forfeit all his property, but his blood became so "corrupted" that he could not inherit or transmit property, so that his children could not inherit from his ancestors. Treason was punishable by death in its most horrid and revolting forms.

Treason has often been made to include crimes that involve breach of personal faith; thus it was **petit treason** for a servant to kill his master, the act involving breach of faith as well as murder. To attempt to kill a sovereign or to wage war against him or adhere to his enemies was **high treason.** Under a tyrannical sovereign, judges often declared an act to be treasonable

which had not been supposed to be so, this new interpretation having the effect of *ex post facto* law. This was called **constructive treason,** and was forbidden under Edward III.

If the decision of a prisoner's guilt or innocence were left to a judge, the prisoner's safety would depend upon the honor, the fairness, the intelligence, and sometimes upon the whim of a single man. Hence the provisions (**113, 69, 90**) that he have **trial by jury** (see page 83).

When a man is held for trial, he is placed in custody unless he can furnish **bail,** a written obligation by which he and other persons bind themselves, if he does not appear for trial, to forfeit a sum of money, the amount of which is determined by the judge. It would be easy to name a sum so great that the prisoner's friends could not furnish it, so the constitution makes provision against excessive bail (**116, 91**).

What amount of bail is excessive depends upon the circumstances of the case—the gravity of the offence, the pecuniary condition of the prisoner and his friends, etc.

If an arrested man could be convicted on the testimony of the officer arresting him, or if he were obliged to defend himself against a skilled prosecuting lawyer, he might be unjustly condemned; so it is provided (**117, 89**) that in all trials the accused person be allowed to appear

with a lawyer to defend him. In practice the government even pays his lawyer's fees when the prisoner is unable to do so.

He also has the right (**89**) not only to be confronted with the witnesses against him, but also to have compulsory process for obtaining witnesses in his favor.

Before 1688 a person arraigned for a capital crime was allowed neither counsel nor witnesses.

If a man who had been put on trial and acquitted could again be arrested and tried for the same offence, he might be harrassed the rest of his life; so it is provided (**117, 88**) that no man shall be twice put on trial for the same offence.

Of course if the jury fail to agree, he may be tried again (see page 85), as that renders the first trial of no effect.

When a prisoner is convicted, his sentence is imposed by the judge. It is provided (**116, 91**) that no excessive **fines** (from Latin *finis*, an end, a sum of money paid to make an end of the suit) be imposed or cruel and unusual punishments inflicted.

Whether a fine is excessive depends upon the ability of the man to pay it. While a street laborer might find it impossible to raise $10, Mr. J. Pierpont Morgan might think it economy to pay a fine of $10,000 rather than lose a day's time in serving on a jury, though there are

judges who would not hesitate to condemn him for shirking his duty as a citizen.

The cruelty of punishment must be largely a question of public opinion, which no longer permits slitting of ears and drawing and quartering. The pillory and the whipping-post are in most states unusual punishments, though the latter is still used in Delaware.

In examining prisoners in their custody the police sometimes resort to torture to force confession, as in the case of Czolgosz, the assassin of McKinley.

When a man is arrested, it is necessary to make sure that at trial evidence be brought forward from **witnesses** (from Anglo-Saxon *witan*, to know). Often, though entirely innocent spectators, witnesses have been imprisoned for long periods to ensure their appearance at the trial. The constitution provides (**116**) that they shall not be unreasonably detained.

All these rights seems to this American generation commonplace and matter of course, like abundance of air and water. But their establishment is comparatively recent, and is the result of struggles for liberty that lasted for many generations. We have seen (page 121) that within 400 years a monarch's whim could put to death any man in his kingdom.

Liberty (from Latin *liber*, free) is something

more than security. Security protects a person as he is; liberty gives him a chance to make himself something more than he is.

The first condition of liberty is **free speech** (**119**, **84**). Every citizen may freely speak, write, and publish his sentiments on all subjects; and no law may be passed to abridge this right.

For the **abuse** of this privilege, however, the citizen is justly held accountable (**119**). In private matters, if a person tells malicious untruths of another, it is **slander** (from Greek *skandalon*, a snare), and may lead to suit for damages; if he publishes malicious untruths it is **libel** (from Latin *libellus*, a little book), and may lead to suit for damages and to criminal prosecution. In all such trials, however, if it can be proved that what was uttered was true, and published with good motives and for justifiable ends, the person must be acquitted (**119**).

Even to send a dunning note upon a postal card is held to be libellous. But beyond this there are times when what would ordinarily be allowable free speech becomes dangerous and unpermissible. "I believe in free speech," said the Duke of Wellington, "but not on board a man-of-war." When the nation is in danger great mischief may be done by talk that would ordinarily pass unnoticed.

During the civil war those who proclaimed

open sympathy with the south were called "copperheads". After the assassination of McKinley Senator Wellington of Maryland was expelled from the Union League club of Baltimore for declaring himself an enemy of McKinley and indifferent.

All sorts of **immoral** writings and publications are subject to heavy penalties.

A **free press** (**119, 84**) is the free speech not of individuals but of the public, and has the same guarantee, subject to even greater responsibility.

In many foreign countries there is still **censorship of the press**; that is, before publication articles must be submitted to a government inspector. This makes a free press impossible; under our laws no court of justice can take notice of writings *intended* for publication.

The **right of petition** (from Latin *petere*, to ask) is also guaranteed (**120, 84**), provided the people assemble peaceably.

Religious liberty (**114, 84**), natural as it seems to us, was at one time the rarest and most highly prized of rights. It has been said that the history of the world is a history of religious persecution.

It is further provided that no religious test shall ever be required as a qualification for any office (**281, 82**). As to appropriations, see p. 323.

The form of **oath** taken in court accompanied

by kissing the Bible, is a recognition of Christianity, but it is provided (**114**) that no person shall be rendered incompetent as a witness on account of his religious belief; and members of the Society of Friends, who object to oaths, are allowed to affirm.

The religious liberty granted is of conscience and not unrestrainedly of action; otherwise persons might profess religious beliefs that would permit licentiousness and other practices inconsistent with the peace or safety of the state (**114**).

Marriage is protected by the provision that no divorce shall be granted except by due judicial proceedings (**120**).

Until 1902, New York did not require a form of marriage, but it now[1] requires that a marriage be solemnized either (1) by (*a*) a clergyman; (*b*) a mayor, recorder, alderman, police justice, or police magistrate in a city; (*c*) a justice or judge of a court of record, or of a municipal court, or a justice of the peace; or (2) that a written contract of marriage shall be signed by both parties and by at least 2 witnesses, and shall be filed within 6 months after its execution in the office of the clerk of the town or city in which the marriage shall be solemnized.

The constitution prohibits **gambling, including**

[1] 339:1901.

pool-selling and book-making upon races, and (see page 130) **lotteries** (**120**); and it punishes betting upon elections (see page 160).

(2) Property Rights

Next to personal security and liberty comes the individual right to property.

"You take my life
When you do take the means whereby I live."

Aristotle says that the state having begun as a means of making life possible, continues as a means of making life prosperous.

Property (from Latin *proprius*, one's own) is that which belongs to one as an individual. It may refer to characteristics, as the properties of oxygen; but in its commoner use it refers to material possessions. The child learns to say of a toy, "This is mine," and to feel injured if another takes it away.

Property in land and the buildings upon it is called **real property**.

There are several provisions of the state constitution which come from the patroon system that at one time prevailed, being an introduction here of the **feudal** (from Anglo-Saxon *feoh*, cattle, which were often required of the tenant) system. In 1629 the West India company offered to any member of the company who should within 4 years place upon the land so granted a colony of 50 adult settlers a tract of

land of 16 miles frontage on any navigable water, or 8 miles on both sides, to extend into the interior as far as he chose. The owner was called a **patroon** (from Latin *pater*, a father —a patron or defender). He must purchase the lands so granted from Indians laying claim to them, and must support a minister and a schoolmaster, but was to be for ten years protected by the government "against all *inlandish* and *outlandish* wars and powers."[1]

In this way a large portion of the land along the Hudson and Mohawk came under control of these patroons, who exercised absolute control, making and executing laws, and even inflicting the death penalty. The tenants had few civil and no political rights. Rensselaerwyck established a manorial court, and made it a condition of renting land that the tenant should agree not to appeal from its decisions. Although restrictions were imposed from time to time, the leases still contained many humiliating provisions.[2]

In 1839 the Van Rensselaer heirs demanded, besides long arrears of interest left uncollected by Stephen Van Rensselaer, the enforcement of their right to one-fourth of the sales of products of the land in case of **alienation** (from Latin *alius*, another—sale to another) thus called **quarter**

[1] Prentice, 50–52, 63, 401, 404–6.

[1] Debates and Proceedings in the convention for the Revision of the Constitution, 1846, pp. 802–5, 815–17, 907–10.

sales. Thousands of farmers formed themselves into **anti-rent** associations, armed and disguised themselves as Indians, and committed such depredations that Gov. Seward issued a proclamation against them, while to assist him in serving the papers, the sheriff called out a posse of 700 men with militia from Troy and Albany. The legislature of 1840 appointed commissioners to adjust the difficulty, but the landlords refused to accept the terms offered, and violence was repeated in 1845, when a Delaware county sheriff was murdered, and Gov. Wright ordered out the militia.

The legislature of 1846 abolished **distress for rent,** and the constitution of 1846 set a time limit to leases and declared feudal tenures abolished, as they had been for 15 years by statute. In the same year the anti-renters elected John Young governor, and he pardoned the 54 anti-renters who had been imprisoned.

In 1852 the court of appeals decided that even previous to 1846 all reservations of quarter-sales were unconstitutional, which practically ended the anti-rent movement as an organization.

The present constitution declares that the original and ultimate property in all lands within the state belongs to the people (**121**); that all feudal tenures are abolished (**122**); that all lands are **allodial** (from Latin *allodium*, entirely

one's own), so that, subject only to **escheat** (from Latin *cadere*, to fall—the eversion of property, to the state in case the owner dies without heirs), the entire and absolute property is vested in the owners (**123**); that no lease of farming land in which is reserved rent or service of any kind shall be valid if for longer than 12 years (**124**); that all **fines** (see page 142—a sum of money paid by the tenant for the privilege of transferring property), quarter sales, and like restraints upon alienation shall be void (**125**); and that no purchase of lands from the Indians shall be valid unless made with consent of the legislature (**126**).

By statute[1] an alien (see page 155) can own real property only after making written declaration of his intention to become a citizen; and minors, idiots, or persons of unsound mind can not tranfer it.

Real estate may however be taken from the owner against his will. When land is needed for a public use, the state may take it by right of **eminent domain** (from Latin *dominus*, owner —the superior dominion of the sovereign power). This right applies as well to personal as to real property, but is seldom applied to personal property except in time of war when supplies are needed.

[1] 547:1896.

When land is required for public buildings, for highways, for water-works, for canals, the legislature may take it. It may delegate to a railway company the right to take land for its road.

The constitution provides, however, that when private property is so taken there must be just compensation (**117, 118**). Land may be taken for roads legally pronounced necessary, and for drains, dykes, and ditches, but only under proper restrictions and with just compensation, and never by special act of legislature (**118**).

Of course real estate may be sold for unpaid taxes or for legal judgments otherwise uncollectable (see page 69). Taxes might be made so high as to result almost inevitably in the confiscation of property (see page 300).

The state has also much control over real estate in its police power. It may render a brewery useless by enacting that no beer shall be manufactured. It may regulate the leasing of tenement houses so as to render buildings untenantable, and it forbids the use of private houses for "sweat-shops".

All property which is not real property is known as **personal property,** including furniture, clothing, money, bonds, stocks, mortgages, etc.

Personal property is also protected. In former times sovereigns often distressed their subjects by **quartering** soldiers upon them — that is by

sending soldiers to private houses for lodging and meals. This is one of the complaints in the Declaration of Independence (see page 591). The constitution provides that in time of peace this shall not be done without consent of the owner, or in time of war except in a manner prescribed by law (88).

A man's house is his castle; and though he be only a tenant, the house is his while he occupies it.

The legislature is forbidden (**128, 51**) to pass laws impairing **contracts** (see page 523).

Of course laws may be passed putting conditions upon future contracts, but not changing the conditions of those that have been made. This applies to grants by the legislature (**128**), which are irrevocable. Daniel Webster won a great victory for Dartmouth college when he proved unconstitutional the attempt of the New Hampshire legislature to transfer the government of the institution from the charter trustees to trustees appointed by the legislature.

(3) Political Rights

The chief **political** right of the citizen is to vote, and of this he can not be deprived except by the law of the land or the judgment of his peers (**112**). This right is so important that we give it a separate chapter.

Besides these constitutional guarantees, personal and property rights are confirmed by a multitude of statutory provisions, some of the more important of which are treated later in separate chapters, pages 492 and 507. The corresponding duties these rights entail are spoken of on page 495. It is difficult for an American child of this country to realize how precious is his heritage until he begins to read history, and compare his security and liberty with that of other times and climes. Every one of the rights treated in this chapter represents the sacrifices for lofty purpose of those who have gone before us. It is for this generation not only to hold fast to all that is good, but to go on perfecting the structure of government. New York has done its part; its constitution and its laws represent to-day the fore-front of present attainment. But there is much still to be achieved, and it is the duty of all citizens not only to comprehend and appreciate the government under which they live, but to aid in perfecting it.

CHAPTER XIV

THE ELECTIVE FRANCHISE

A **franchise** (from French *franc*, free) is a particular privilege granted by a sovereign, a constitution, or a statute.

The **elective franchise,** or the right to vote, is conferred by the state constitution (**130**).

A vote is sometimes called a **suffrage** [1] (from Latin *sub* and *frangere*, to break, because a broken potsherd was formerly used in voting). Those who have the right to vote are often called **freemen** or **electors.**

New York limits the suffrage to (1) males; (2) of the age of 21; who have been (3) citizens 90 days; (4) inhabitants of the state 1 year; and residents (5) of the county 4 months and (6) of the election district 30 days (**130**); (7) duly registered if required (**133**); and who are **not** (8) lunatics, (9) idiots, (10) paupers (**132**); or convicted of (11) giving or receiving bribes (**131,281**), of (12) betting upon election (**131**), or of (13) any infamous crime. [2] We will consider these in detail.

(1) **Woman suffrage** has been granted in full in several states, and in part in several others. Women have been allowed to vote at school

[1] Titus Andronicus, i.2; iv.3. [2] 654:1901.

meetings in New York since 1880, and those who own property have been allowed to vote on questions involving the expenditure of money since 1901 (see pages 19, 32).

(2) The **age of 21** is fixed almost universally as that of "coming of age", including release from parental authority, and the recognition of sufficient maturity to act with judgment and discretion.

(3) **Citizens** (from French *cité*, a city) are natives of this country, and natives of other countries who have become citizens by **naturalization** (99).

When naturalized, an **alien** (from Latin *alienus*, compare page 148, belonging to another country) has all the rights of native citizens except that of being elected president or vice-president (57, 97). Until he is naturalized, an alien is a subject of the country from which he came.

In one-fourth of the states citizenship is not required.[1]

Bryce says (ii.290; see also ii.95): "From the immigrants neither national patriotism nor a sense of civic duty can as yet be expected; the pity is that they have been allowed civic power." By the common law an alien could not hold real estate, and in some states an act of the legisla-

[1] B i.319, 406. Indiana, for instance, gives the franchise to aliens who have resided a year in the United States and 6 months in Indiana, and who have declared their purpose to become citizens

ture is still required to enable him to hold such property (see page 150).

New York requires (**130**) that the voter shall have been a citizen for 90 days.

Congress has entire control of the naturalization of aliens (**29**); which is of course necessary, since if New York required 2 years residence and Massachusetts 6 years, an alien naturalized in New York might move to Massachusetts and demand recognition as a citizen (**99, 73**).

The original law of congress (1790) made the term of **residence** before naturalization 2 years, but in 1795 it was made 5 years. From 1798 to 1802 it was 14 years, but has since been 5 years. There must also be 1 year of residence in the state where he is naturalized.

At any time after becoming a resident an alien may file in a circuit or district court of the United States or any court of record of a state a **declaration of intention** to become a citizen, and 2 years longer must intervene before he receives his naturalization papers. He must file with the clerk of the court to which he is to apply, 14 days before his request is acted on, a written application giving his name, his residence, and the names and residences of the witnesses he is to bring. A record of these statements is kept on file open to public inspection. When he applies he must renounce allegiance to

all foreign powers, and swear to support the constitution of the United States, whereupon he receives a certificate of citizenship.

When he becomes naturalized, his children under 21 if residents here become citizens. If he has declared his intention and has died before becoming naturalized, his wife and children may become citizens on taking the proper oath.

This declaration is not required of minors who have resided in the United States from 18 to 21, have continued to reside here till time of application, and have resided here 5 years.

Persons born out of the limits of the United States; of fathers who are at the time citizens of the United States, are citizens of the United States; but the rights do not descend to persons whose fathers never resided in the United States.

Until 1870 the privilege of naturalization was confined to white persons. In 1882 congress denied the privilege to the Chinese. The 14th amendment (**99**) declares the negroes to be citizens, and the 15th (**104**) secures them the suffrage.[1] The act of congress of 1875 giving all persons the right to equal enjoyment of inns, public conveyances, places of amusements, etc., was declared by the supreme court to be unconstitutional so far as the states were concerned.

The political disabilities imposed by the 14th

[1] B ii.157.

amendment (**101**) on some of those who had participated in the civil war were removed by congress, and proclaimed by the president in 1867 and 1868.[1]

(4, 5, 6) **Residence** is required, that a man may be known to have the right to vote; and that he may have personal interest in the issues presented, and acquaintance with the circumstances that prevail.

No one gains or loses a residence by presence or absence (1) in the service of the United States, (2) while engaged in navigation upon the waters of the state, (3) while a student of any seminary of learning, (4) while kept at any charitable institution, or (5) while confined in prison (**132**).

New York requires residence not only in the state for 1 year and in the county for 4 months, but in the election district for 30 days. This is to prevent frauds at elections by "colonizing" voters just before election, without giving time to investigate.

If disqualified to vote for any officer a man is disqualified to vote for all. Thus by moving from one district in the city to another within 30 days of election he loses the right to vote at that election not only for city but for county and state officers.

(7) **Registration** (see page 177) is required at

[1] B ii.157.

least 10 days before election, that there may be time to detect any frauds.

(8) **Lunatics** (from Latin *luna*, the moon—because formerly supposed to be influenced by changes in the moon), and (9) **idiots** (from Greek *idiotes*, an ignorant person) are plainly unfit to exercise the franchise.

(10) **Paupers** (from Latin *pauper*, contracted in English to *poor*) are allowed to vote in most states, though it seems unreasonable that those who have not ability to support themselves should vote as to the disposition of the property of others.[1]

On the other hand the actual possession of property is not now required. The New York constitution of 1777 made such a requirement, and Rhode Island maintained a small property qualification till 1888.[2] But it is the American idea that every man who supports himself, rich or poor, pays taxes directly or indirectly, and is interested that the government should be rightly administered.

In some states only those can vote who pay a **poll**[3] **tax,** a tax of a specified amount levied upon every citizen without regard to the amount of property he owns.

This sometimes prevents poor citizens from voting, and sometimes tempts a candidate to

[1] B i.464. [2] B i.123, 465. [3] See page 165.

offer to pay it for those who will vote for him.

Though a man own property in a dozen states he can vote only where he has his residence.[1]

(11) **Bribery** (from French *bribe*, the scraps given to a beggar) is provided against in the constitutions of most of the states. In Tennessee a person convicted of bribery is for 6 years thereafter disqualified from holding office.

Bribery may consist in offering gifts to influence a voter at an election or to influence official acts of an officer or a legislator. When a bribe is offered and refused, only the one offering is criminal; but if the bribe is accepted both are equally guilty.

While bribery is often the direct payment of money, it may assume other forms. In strict construction the promise of an office should the party be successful might be so considered; though this has been construed leniently, since it is difficult to draw the line between a party and a personal service. But when a contractor is promised a certain contract, or a newspaper a certain kind of advertising, or a corporation certain privileges, the bribery is no less real (**282-284**).[2]

(12) **Betting** upon election disqualifies a person from voting, his interest to win the bet being

[1] B i.585. [2] B ii.150–159.

assumed to be greater than to secure the election of the person best qualified.

(13) **Infamous crimes** are spoken of on page 545.

The United States constitution forbids a state to deprive a person of the elective franchise on account of race, color, or previous condition of servitude (**104**), but otherwise leaves the matter entirely to the states, making the electors for members of congress the same in each state as those whom the state permits to vote for the most numerous branch of the legislature (**3**).

It provides that if any male citizens 21 years old are not allowed to vote the representation of the state shall be proportionally diminished (**100**); but though several of the southern states have passed laws practically excluding most of the negro vote by imposing educational or property qualifications[1] congress did not diminish their representation in that body by the apportionment of 1901. As a rule the Chinese have no political rights.

As to whether **educational** qualifications should be demanded in good faith there is a difference of opinion. Bryce says: "Education ought, no doubt, to enlighten a man; but the educated classes, speaking generally, are the property-holding classes, and the possession of property

[1] B i.465.

does more to make a man timid than education does to make him hopeful."[1]

In cities and villages of 5,000 inhabitants, before every general election 4 meetings of registration are held on the 4th and 3d Fridays and the 4th and 3d Saturdays before election, to be open in New York and Buffalo 7 a. m. to 10 p. m.; elsewhere 8 a. m. to 9 p. m. In other places 2 meetings are held, on the 4th and 3d Saturdays, from 9 a. m. to 9 p. m. Each political party entitled to file certificates of nominations (see page 172) may appoint not more than 2 **watchers** to attend the meetings for registration, and sit within the guard rail.[2]

A person who offers to register (see page 177) may be **challenged** (from Latin *calumnia*, accusation) by any qualified voter present. Thereupon the chairman of the board of inspectors must require the challenged person to fill out under oath a challenge affidavit, a book being supplied to each board. This asks questions as to identity, residence, conviction of felony, etc., and gives height, weight, color of hair, hair on face, and kind of nose. If he so fills out the affidavit as to convince the inspectors that he is entitled to vote, they must enrol his name; but if not, his name is to be entered as disqualified. To fill out the statements falsely is to be guilty of perjury

[1] B ii.244. [2] 300:1901.

(see page 546). At the close of each day the copy of the statements in the affidavit is delivered to the sheriff or police officer for investigation, and if any statement be found untrue, the facts are presented to the district attorney for presentation to the grand jury (see page 82).

A person may also be challenged when he offers to vote, and required to answer orally the questions upon the affidavit already mentioned, and unless he answers them satisfactorily his vote is not received.[1]

A **majority** (from Latin *major*, greater; see page 102) of votes is more than one-half of all the votes cast; a **plurality** (from Latin *plus*, more) is more for one candidate than for any other. Thus if of 1,000 votes A receives 450, B 350, and C 200, A has a plurality but not a majority.

In most of the New England states a majority is required to elect the highest officers, and in the case above a new election would be required, or would be thrown into the legislature. So New York and most other states require only a plurality vote.

In the election of supervisor, where the vote is a tie a special election must be held.[2]

[1] 544:1901. [2] 349:1901.

CHAPTER XV

ELECTIONS

In all forms of government the choice of officers is the most important consideration. No matter how wisely laws are framed, they are useless unless they are justly and wisely administered.

In monarchial governments most officers are appointed directly or indirectly by the sovereign, but in a republican government all officers are elected directly or indirectly by the people. The tendency is strong at present to make elective offices fewer, and to give to those elected the power to appoint the minor officers (see page 102); but the elected officers are responsible to the people for the appointments they make, and when their terms of office expire are not likely to be re-elected unless their appointments have been wise—so the power is still in the hands of the people.

Elections (from Latin *eligere*, to choose) are periodical determinations by the people of who shall represent them in the various offices established by law. They are frequent, as the times of town, village, city, state, and national officers expire and their successors are to be chosen.

New York provides that state elections shall come in the even-numbered and in the larger cities municipal elections in the odd-numbered years (279) so that the issues may be kept distinct.

The **general election** in New York and many other states occurs on the Tuesday following the first Monday in November (149). This is in leap-years the day of the presidential election, and has been adopted in many counties for the town-meetings (see page 31).

Notice of election is sent by the secretary of state to all county clerks at least 3 months before each general election, stating the day and naming each state officer to be voted for; and the notice, with corresponding notice of the election of local officers, is published by the county clerk in newspapers designated.[1]

Special elections may be held only upon due public notice.

The voting-places or **polls** (from low German *polle*, meaning head, hence person, and hence place where voting is done) are appointed at convenient places in each election district (see page 48), and are open from 6 A. M. to 5 P. M.[2]

The usual manner of voting is by **ballot** (from French *ballotte* a little round ball, still commonly used in voting for candidates for clubs).

[1] 232:1901. [2] 654:1901.

There are other ways of voting, as by the voice, or *viva voce* (Latin, by the living voice), where those in favor are called upon to say aye, and afterward those opposed to say no. English members of parliament were elected in this way until 1871. But this is suitable only in small meetings, as the fewer in number may shout the louder and seem to be more numerous.

Another way is by show of hands, or by standing, those in favor and those opposed being called in turn and the numbers counted.

Both of these methods require all the voters to be present at the same time, while by the ballot the voting may extend over a long period.

Both of them involve open voting, which may lead a man to vote against his convictions, to oblige a friend, not to offend an employer, or to earn a bribe. The ballot is therefore a protection to the timid, and, if really secret, a defence against corruption. It was provided for in some of the colonial charters, and is now almost universally required.

New York requires that except for certain town officers (see page 31) election must be by ballot, "or by such other method as may be prescribed by law, provided that secrecy in voting be preserved" (**134**).

By the original ballot system, separate tickets for the various offices were prepared and dis-

tributed by the candidates or the parties, and dropped by the voter into a box. This did not ensure secrecy. The ballots for the different candidates could sometimes be distinguished; and a briber who had given a voter a ticket could watch him till he deposited that very ticket in the box.[1]

The **Australian**[2] **ballot** used in New York has these advantageous features: (1) A stall is provided for the voter, where he may cast his vote in secrecy,—at least one stall for every 75 voters, and in which no voter is allowed to remain more than 5 minutes, so that there may be plenty of time to vote;

(2) The names of all the candidates nominated by all the parties are printed on a single ticket, so that the voter can choose freely and intelligently;

(3) The ballots are provided at public expense, so that there is no advantage to a wealthy party, and no excuse for levying assessments upon candidates.[3]

The form of the Australian ballot is shown on page 169, where it is used in a voting machine. The names of all candidates are printed on a single large sheet, those of each party arranged in a column, with the emblem of the party over it or at the left-hand side.

[1] B ii.136, 138. [2] So called because first used there. [3] B ii.135.

Those shown are the eagle (republican), the star (democrat), the workman's arm (labor), the fountain (prohibition), the clover (people's), the ship (national democrat), and the anchor (independent reform).

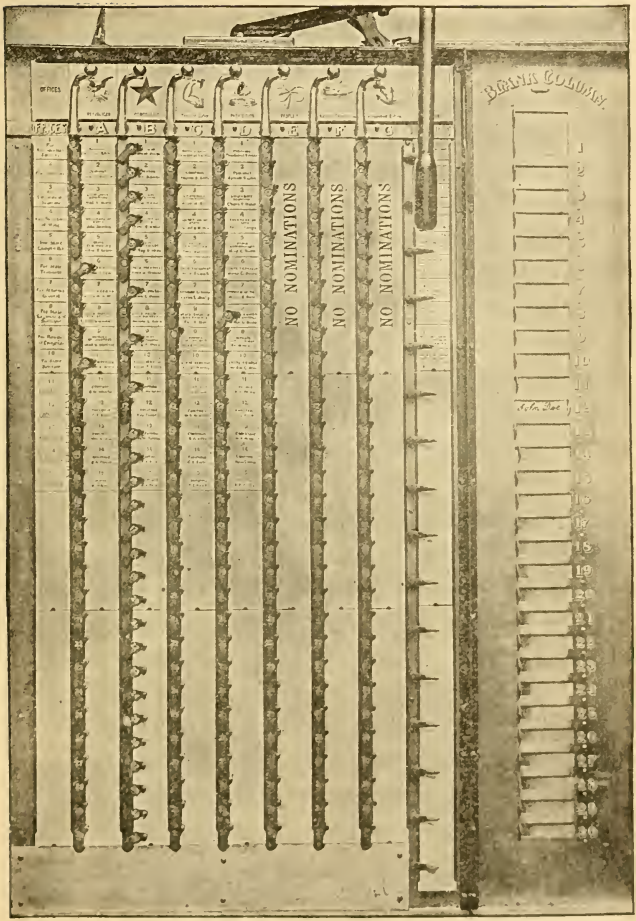
On the ballot a large circle is placed over its party emblem, and the voter may vote the "straight ticket", that is for all the candidates of his party, by marking a cross in this circle.

If he wishes to "split" his ticket, that is to vote for some candidates of one party and some of another, he puts a cross before each name for which he desires to vote. The voter receives the ballot folded and gives it back folded in the same way, so that it can not be seen how he has voted.

Voting machines are authorized by congress and by the laws of many states. In New York three voting machine commissioners[1] are appointed by the governor for a term of 5 years. One of them must be an expert in patent law, and two mechanical experts. When they have examined a voting machine and reported to the secretary of state that it may be safely used, it may be adopted at elections. Where this is used no ballot clerks are elected.

The form usual in this state is as follows:

[1] 466:1899.



A full Australian ballot is placed upon the front of the machine, in full view of the public,

until the voter enters the booth, when a curtain automatically encloses him. At the head of each ticket, over the party emblem, is a brass knob. The voter selects the one he wishes to vote, pulls the knob to the right, and lets it slip back, which casts a vote for the entire list of candidates below. This leaves a pointer pointing to each name on the straight ticket. If the voter wishes to vote for some other candidate for some office, he turns back the pointer from the name he does not wish to vote for, and turns the pointer to some name in the same line that he wishes to vote for. If he does not wish to vote for any name on the printed ballots, he may move to the right a slide in the blank column and write the name on the paper. If he turns back the pointer from a name but does not vote for some other name in the same line, his vote for the office on that line will be blank. When he has voted he opens the curtain and the lever registers his vote and turns back the pointers, thus concealing what he has done.

In the cut given, the voter has pulled the knob for the democratic ticket, but has split the ticket by voting for the republican candidates for the 6th and 10th offices, the prohibition candidate for the 8th, and an unnominated name for the 12th.

To vote yes on the amendments or questions proposed in the right hand column, he moves the

pointer up to the "yes"; to vote no he moves it down to the "no". In the cut given he has not voted upon the questions given.

The voter may not remain more than one minute in a booth, and election districts using the machines must not contain more than 600 voters.

In some states each voter may vote for only part of those nominated, so as to give the minority a chance to elect one or more candidates. Thus in Pennsylvania each county is governed by a board of three commissioners, elected for three years, upon a minority vote system, the elector being allowed to vote for two candidates only.[1]

That these Australian ballots should be printed at public expense, laws are necessary regarding **nominations** (from Latin *nomen*, name), which must be filed as follows:[3]

kind of officers	*with whom*	*days before election*	*party*	*independent*
state	secretary of state,	not more than 40, and not less than	30	25
city	city clerk	35	25	20
county	county clerk	35	25	20
village	village clerk	20	15	10
town	town clerk	20	15	10

In special elections ordered by the governor nominations must be filed not less than 15 days

[1] B i.580. [3] 645:1901.

before the election. All nominations must be publicly advertised, those at general elections in designated newspapers for 6 days, and those for town or village elections by posted notices at 10 places for 1 day.[1] To be recognized upon the ballot, certificates of indipendent nominations must be filed, signed by electors as follows :

kind of office	*filed with whom*	*number required*
state	secretary of state	6,000
cities of 1st class	city clerk[2]	2,000
cities of 2d class	city clerk	1,000
cities of 3d class	city clerk	500
ward[4]	city clerk	100
county[3]	county clerk	1,000
assembly	county clerk	500
commissioner district	county clerk	500
village[4]	village clerk	100
town[4]	town clerk	100

Vacancies occurring in party nominations may be filled by a majority of the committee of the party which filed the certificate.

Besides (1) attending to the registration of voters (see page 177), the inspectors (see page 48) (2) make ready the polling places, ballot boxes, etc.; (3) preside at election, receive the votes and deposit them in the boxes prepared; (4) at the close of the election count them and

[1] 654:1901. [2] Except in New York and Brooklyn.
[3] New York, Kings, and Erie require 2,000.
[4] When an assembly or school commissioner district, 500.

(5) prepare a certified statement of the result and two certified copies. One of the certified copies is delivered to the supervisor, or in his absence to an assessor. The other certified copy, with the poll books, one tally sheet, and one of the registers used, they file in the town clerk's office within 24 hours after completing the canvass. The original certified statement, with the sealed packages of void and protested votes, stubs and unvoted ballots, the record of challenged and assisted voters, one of the tally sheets, and 3 copies of the register, must be filed within 24 hours in the county clerk's office, for him to keep sealed. If the election is for the choosing of town, city, village, or district officers, the inspectors determine who is elected and declare the result. But for other elections the returns are referred to the **county board of canvassers.**

This is the board of supervisors[1] (see page 64), which meets on the Tuesday next following the election. It elects one of its members chairman, and the county clerk is clerk of the canvass. It receives all the records of the election from the county clerk and the supervisors, canvasses the votes, and make certified statements to be filed and recorded in the office of the county

[1] In New York city, and in counties containing a city of the 2d class the county board of canvassers is the city board of canvassers (208:1901).

clerk. Of the results of the election for presidential electors, congressmen, state officers, and constitutional amendments, he makes 3 certified copies and within 5 days mails one to the secretary of state, one to the governor, and one to the comptroller.

Of the persons elected as county officers, to the assembly, and as school commissioners, he sends within 20 days after a general and 10 days after a special election a list to the secretary of state; to whom he also sends before Dec. 15 a certified copy of the official canvass by election districts of the votes cast in the county.

The state board of canvassers (see page 210) meets on or before the 15th of December after a general election, or within 40 days after a special election, to canvass the votes, after which the secretary of state notifies the persons elected.

The present system of elections is the result of much ingenuity and experiment, and New York has omitted no approved safeguard of an honest ballot. Her system of registration (see pages 162, 177) gives both parties opportunity to assure themselves that only the qualified voter has opportunity to cast his ballot; the enclosed booth (see pages 167, 170) ensures secrecy while he prepares his ballot; the Australian or blanket ballot gives him the widest liberty of choice as to candidates, and prevents detection of the

choice he makes. A form of ballot previously used was called the paster ballot, provision being made for pasting names over those printed upon the ballot—an awkward and ineffective expedient. In the Australian ballot, the voter has all the nominated names before him, with liberty and opportunity to substitute any other name for any office.

The effectiveness of the present system was shown in the election of 1901 in New York city, where the party in power did not carry a single office. A ballot that can work an overturn like that is capable of working the will of the people, and it is the fault of the people if their will is not carried out.

CHAPTER XVI

PRIMARY MEETINGS

Party nominations are made through the **primary meeting** or **caucus**.

The history of the caucus is interesting. Washington was chosen president without nomination, by common consent. In 1796 the federals informally agreed to nominate Adams, and the democrats to nominate Jefferson. In 1800 a congressional federal caucus nominated Adams and Pinkney and a republican caucus Jefferson and Burr.[1] Similar nominations were made in 1804. In 1808 the federals made no caucus nominations; but a republican caucus was summoned by the senator who had presided in 1804, thus taking on a feature of permanence. In 1812 the caucus became a "committee of correspondence" made up of one member from each state; but 70 federal delegates from 11 states met in New York and nominated DeWitt Clinton for president, thus forming the first national convention.[2]

Members of state legislatures, especially in New York and Virginia, also held caucuses to nominate state officers; but this was soon ob-

[1] B ii.171. [2] B ii.171–183, 214.

jected to, on the ground that it threw political power into the hands of a few men. In 1817 the New York republican caucus admitted delegates from counties that had no representatives in the legislature; and soon delegates were admitted from all the counties, so that a party convention took the place of the nominating caucus.

The system has grown till it dominates every election, even for town officers. It has afforded unscrupulous politicians a means of nominating only their own henchmen, and thus of filling offices with men who were unscrupulous and corrupt. The more respectable voters have often neglected the caucus, and sometimes when they have attended they have been deprived of their rights. Bryce considers this one of the great dangers of the republic.

New York, however, has a system of laws covering primary elections that affords every convenience and safeguard that has been devised.

There is first for cities and villages of 5,000 inhabitants, where personal acquaintance can not be depended upon, a system of **registration** (from Latin *re* and *gerere*, to carry back) that ensures every voter the right to cast his vote at caucus, and gives assurance that no wrongful votes can be counted (**133**).[1]

The board of inspectors of each election dis-

[1] 179:1898; 473:1899; 506:1900; 167:1901.

trict (see page 48) makes quadruplicate registers, one copy by each of the 4 inspectors, in which the names of the registered voters are entered alphabetically, with 19 columns giving such full information as should prevent any possibility of fraud.[1] Only those duly registered to vote may participate in primaries, and in a separate envelope they may register for the primaries at the same time they register to vote.

The general county committee of each party is elected at the annual primary meetings in September,[2] either directly or by conventions of delegates elected at this time.

Bryce says (ii.109) that of the 1007 primaries and conventions held in New York city preparatory to the elections of 1884, 633 took place in liquor saloons; but the present New York law forbids holding a primary within 300 feet of a saloon.

The **annual primary day** is the 7th Tuesday, in leap years the 10th Tuesday, before the general election.

In presidential years there is an additional official primary day, the last Tuesday in March.

While the smaller local officers are filled directly by the primary meeting, it would be impracticable for all the voters to gather to nominate for county and other offices, and so by the representative system the primary meeting elects **delegates** to a **nominating convention.**[3]

[1] 113:1901. [2] 167:1901. [3] B ii.80.

Thus a town caucus nominates delegates to an assembly district convention, which nominates delegates to a state convention, which nominates delegates to the national convention at which candidates for president and vice-president are nominated.

At a nominating convention a temporary chairman is elected, who appoints a committee on credentials. When the accredited delegates are determined on, a permanent chairman is elected, and the convention is duly organized. After it has made its nominations, and perhaps passed resolutions expressing its sentiments on certain political issues, it adjourns and vanishes, the rest of the business of the campaign being in the hands of the committee (see page 183).[1]

It is usually felt that all the delegates are bound by the action of the caucus or convention, though sometimes those who have failed to nominate their candidate "bolt" the ticket, nominating an independent candidate or voting for the candidate of the other party.[2]

The importance of the primary meeting is manifest, since unless respectable voters attend and vote, all control is left in the hands of the unscrupulous.[3] So, too, citizens should be willing to serve as delegates to the many nominating

[1] B ii.81, 82, 90. [2] B ii.84. [3] B ii.108, 162, 169, 183.

conventions, not grudging the time and travelling required to secure the best candidates.[1]

The state even in the constitution (135) recognizes **political parties.** Bryce says (ii.74):

"There are three ways by which in self-governing countries candidates may be brought before electors. One is by the candidate's offering himself, appealing to his fellow-citizens on the strength of personal merits, or family connections, or wealth, or local influence. This was a common practice in most English constituencies till our own time; and seems to be the practice over parliamentary Europe still.

"Another is for a group or junto of men influential in the constituency to put a candidate forward, intriguing secretly for him or openly recommending him to the electors. This also largely prevailed in England, where in countries four or five of the chief land owners used to agree as to the one of themselves who should stand for the county; or chose the eldest son of a duke or a marquis as the person whom his rank designated. So in Scotch boroughs a little knot of active bailies and other citizens combined to bring out a candidate, but generally kept their action secret, for 'the clique' was always a term of reproach. The practice is common in France

[1] B ii.383.

now, where the committees of each party recommend a candidate.

"The third system is that in which the candidate is chosen neither by himself nor by the self-selected group, but by the people themselves, i. e. by the members of a party, whether assembled in mass or acting through representatives chosen for the purpose. This plan offers several advantages. It promises to secure a good candidate, because presumably the people will choose a suitable man. It encourages the candidate, by giving him the weight of party support, and therefore tends to induce good men to come forward. It secures the union of the party, because a previous vote has determined that the candidate is the man whom the majority prefer; and the minority are therefore likely, having had their say and been fairly out-voted, to fall into line and support him. This is the system which now prevails from Maine to California, and is indeed the keystone of transatlantic politics." "Numbers without organization are helpless and with it omnipotent."[1]

He says again (ii.38): "What constitutes a party? In America there is a simple test. Any section of men who nominate candidates of their own for the presidency and vice-presidency of the United States are deemed a national party."

[1] B ii.10.

In New York to be recognized as a party, an organization must have cast at the last election for governor at least 10,000 votes.[1]

In England parties date from the struggle of the Stuart Kings with the puritan party in the house of commons, and in the reign of Charles II began to be known as whigs and tories.[2]

"The essence of the English parties has lain in the existence of two sets of views and tendencies which divide the nation into two sections—the party, let us say, though these general terms are not very safe, of movement and the party of standing still, the party of liberty and the party of order."[3]

In America the fundamental distinction of parties has been the same—between progressives and conservatives; between those who favor a strong government and those who are more intent upon preserving individual liberty; between those who say the United States is and those who say the United States are (see page 338).

Alexander Hamilton wanted a strong government, and thought first of order; he founded a party known first as federalist, then as national republican, then as whig, and since 1856 as republican. Thomas Jefferson feared centralization of power, and thought first of liberty.[4]

[1] 664:1901. [2] B ii.20. [3] B ii.21. [4] B ii.6.

His party was first called republican, but since 1830 has been known as democratic.[1]

These are only general distinctions; many other issues have arisen and have divided the parties on other lines, such as foreign policy, a United States bank, slavery, and free trade. Additional parties have been founded; nine parties nominated candidates for president in 1900. But this general line of cleavage has always divided the country into two great parties, and is likely always so to divide it.[2]

This is in many ways advantageous. When parties have nearly equal support, the party out of power keeps a close watch upon the party in power, which in turn is compelled to avoid cause for criticism.

Party organization results in party machinery. Each party has national, state, congressional, county, town, city, ward, and other committees.[3] These committees aim to keep peace in the party, preventing dissensions and schisms; to bring in new voters, sometimes from the opposite party, but oftener those coming of age to vote, or just naturalized, or new-comers; and to keep up interest in the party by speeches and literature.[4] A close record is kept of every voter in every district; and if there is a possi-

[1] B ii.11. [2] B ii.16, 20. [3] B ii.78. [4] B ii.73.

bility of bringing him within the party, no pains is spared to do so.[1]

This involves a good deal of work, so much that some men give it practically their entire time; and these become professional **politicians** (from Greek *polites;* see page 28), who attend caucuses, and see that their adherents attend, get chosen as delegates, secure offices for themselves and their friends, and always have something definite and clean-cut to suggest when the general public is purposeless and ready to be led.[2]

The word politician is not necessarily a term of reproach. There is truth as well as satire in the definition of Thomas B. Reed that a statesman is a successful politician who is dead. Alexander Hamilton, of whom Talleyrand said that only Fox and Napoleon were his equals, was in his own time called derisively the stepfather of his country.[3]

But if the rest of the community is to abandon the management of politics to those who carry it on to make a living, the standard becomes low.

Bryce says (ii.383): "Those who study these questions most critically and think the most carefully fear more for the republic from the indifference of the better classes than the ignorance of the lower classes. We hear endless talk about

[1] B ii.73, 79. [2] B i.6; ii.56, 283. [3] B ii.7, 8.

the power of the labor vote, the Irish vote, the German vote, the granger vote, but no combination at the ballot-box to-day is as numerous or as powerful as the stay-at-home vote."

And again (ii.467): "The deepest deficiencies in our system of government are the prominence of inferior men in politics, and the absence of distinguished figures. * * * If the natural leaders of the community are absorbed in private business, shrink from what they call the regularities of practical politics, and refuse to sacrifice their time and tastes and comfort in the struggle with wire-pullers and demagogues, the latter will prevail, and what is known as 'the machine', with a 'boss', sitting like a spider in the midst of his web "becomes all-powerful."

"What the client was to his patron at Rome, what the vassal was to his lord in the Middle Ages, that the heelers and workers are to their boss in these great transatlantic cities. They render a personal feudal service, which their suzerain repays with the gift of a livelihood; and the relation is all the more cordial because the lord bestows what costs him nothing, while the vassal feels that he can keep his post only by the favor of the lord."[1]

When the bosses of the two parties unite forces under an agreement to divide the spoil, we have

[1] B ii. 108.

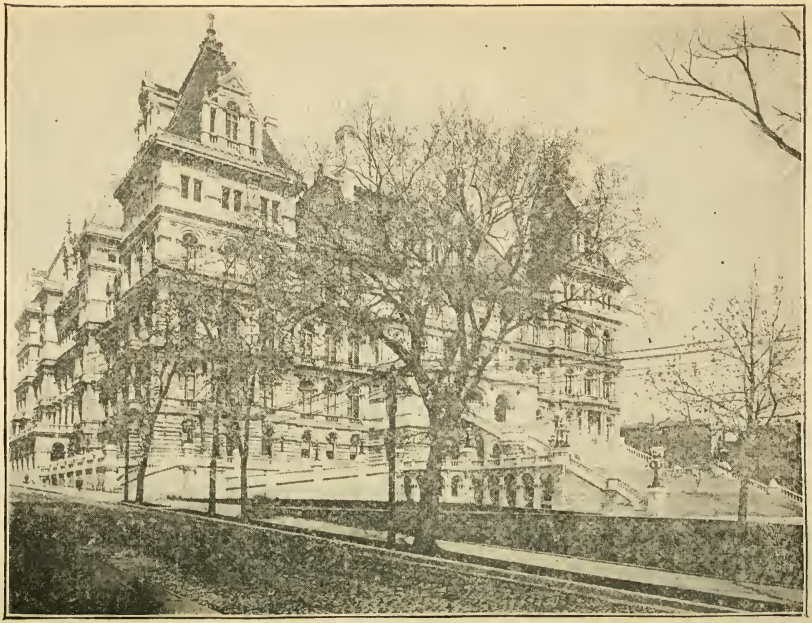
what is called a ring. "The typical boss regards the boss of the other party much as counsel for the plaintiff regards counsel for the defendant. They are professionally opposed, but not necessarily personally hostile."[1] When a ring has fastened its clutches on a city or a state, it is seldom dislodged till some shocking abuse of power awakens the entire community to a sense of danger.

The organization being thus formed and in working trim, it is extended beyond the national and state issues with which the party is properly concerned to those of city and village and town, as though there could be such a thing as a republican gas lamp or a democratic asphalt pavement.[2]

The only safety lies in the general recognition in the community of the duty to attend primary meetings, and thus secure that only safe men are nominated for office. At present this duty is even more important than that of voting at elections. It is usually easier to work within the party than to try to form a third party; and when those determined upon good government are as active and as untiring as those in control they are pretty sure to arouse public sentiment sufficiently to carry the primary.[3] Failing in this reformers sometimes nominate an inde-

[1] B ii.110. [2] B i.543, ii.51. [3] B ii.163, 166.

pendent set of candidates, or persuade the opposite party to nominate men personally unobjectionable. In New York great parties are so evenly balanced that the independent element is always large enough to turn the scale.



THE STATE CAPITOL, ALBANY

CHAPTER XVII

THE GOVERNOR

When the colonies became states, they all continued the office of governor, making him elected by the people instead of appointed by the crown.[1] It was the one colonial office that had universally justified itself.

Bryce says (i.276; see also 271, 283, 293, 509): "In these colonies the executive power had been vested either in a governor sent from England by the crown, or in certain proprietors, as they were called, persons to whom the English crown had granted hereditary rights in a province. Along with these authorities there had existed representative assemblies, who made laws and voted money for the purposes of their respective commonwealths. They did not control the governor because his commission issued from the British crown, and he was responsible thereto and not to the colonial government. A governor had no parliamentary cabinet, but only officials responsible to himself and the crown. His veto on acts of the colonial legislature was frequently used; and that body, with no means of

[1] B i.459.

controlling his conduct other than the refusal to vote money, was a legislature and nothing more. Thus the Americans found and admired in their colonial (or state) systems, a separation of the legislative from the executive branch, more complete than in England, because in the colonies no ministers sat in the legislature. And being already proud of their freedom, they attributed its amplitude chiefly to this cause."

In Connecticut and in Rhode Island the governor had been elected by the people, and in these colonies the governor did not have the power of veto.

The power of the state governors was however much more restricted.[1] A **colonial governor** "could convene and dissolve the assembly; could suspend members and fill vacancies; could erect courts, appoint justices of the peace, and pardon all offences,—treason and murder alone excepted."[2]

A state governor has the powers of veto and of pardon; he has command of the militia, and may recommend legislation. But local legislation controls and local officers execute so large a part of the government of the state that except in emergencies his authority is comparatively narrow[3] (see page 102).

Yet the office has great dignity. In the early

[1] B i.277, 503. [2] Prentice 140, 258, 469. [3] Hadley, 80.

days of the nation a governor sometimes refused to yield precedence to the president; in 1795 John Jay resigned his place as chief justice to become governor of New York.[1]

The **qualifications** required in New York are (1) that he be a citizen of the United States, (2) a resident of the state for the past 5 years, and (3) at least 30 years old (**184**). The salary is $10,000 and a furnished residence (**186**). The term is 2 years (**183**). It was 3 years till 1821; then 2 years till 1874; then 3 years till 1894.

The **election** is by plurality vote at the general election; but in case the two candidates receiving the most votes have an equal number, the legislature at its next session by joint ballot chooses one of the two for governor (**185**).

He is the **executive** officer of the government; "he shall expedite all such measures as may be resolved upon by the legislature, and shall take care that the laws are faithfully executed (**186**)."

In the veto (**191**) he has **legislative** power, and this is treated under the head of the legislature, on page 242. His power to convene the legislature and to suggest legislation is often important. Bryce says (i. 509): "In a commercial crisis, like that which swept over the union in 1837, when the citizens are panic-stricken and the legislature hesitates, much may depend on the initiative of

[1] B 175, 509.

the governor, to whom the eyes of the people naturally turn. His right of suggesting legislative remedies, usually neglected, then becomes insignificant, and may abridge or increase the difficulties of the community."

He **appoints** several thousand officers; some of the most important of them are named on pages 196, 202–209.

He may also **remove** many officers for cause, as is frequently noted in the following pages.

But this power is his only when it is expressly conferred upon him. He can not interfere even with an election inspector who performs his duties properly. He is the highest officer in the state, but he is not a master; he is like all other officers the servant of the people, and his powers are limited to those named in constitution and statute.

Bryce says (i.239): "In free countries an individual citizen is justified in disobeying the orders of a magistrate if he correctly thinks his orders to be in excess of the magistrate's legal power, because in that case they are not really the orders of a magistrate, but of a private person affecting to act as a magistrate. In England, for instance, if a secretary of state, or a police constable, does any act which the citizen affected by it deems unwarranted, the citizen may resist, by force if necessary, relying on the ordinary courts

of the land to sustain him. This is a consequence of the English doctrine that all executive power is strictly limited by law, and is indeed a corner-stone of English liberty."

The governor **represents** the state in its dealings with other states (**72**) and with the federal government. He has the power of **extradition** (see page 554). When a criminal escapes from one state to another, the governor of the former makes upon the governor of the latter a **requisition** (see page 554) for his delivery to the former state, and this the governor usually grants (**74**).

In the case of a criminal he may **pardon** (from Latin *per*, perfectly, and *donare*, to give—to grant full release from the punishment), **reprieve** (from Latin *re* and *probare* to try, to postpone the execution of a death sentence), or **commute** (from Latin *com* and *mutare*, to change, to exchange it for one of less severity) the sentence, except in case of treason, when he may only suspend sentence till the next meeting of the legislature; and in cases of impeachment, where he has no authority (**187**).

This power formerly belonged to kings, as the fountain heads of justice. It has often proved pernicious.

He is commander in chief (**186**) of the **militia** (from Latin *miles*, a soldier). Every able-bodied resident of the state between the ages of 18

and 45 is liable to service in the militia (269), and though in time of peace only those are liable who voluntarily enlist (270), in time of war all those liable may be called upon. They are known as the **enrolled militia.**

The states are not allowed to maintain a **standing army** (52), which is a permanent force of soldiers with no other occupation. The active or **enlisted militia** of New York is made up of not less than 10,000 enlisted men, uniformed, armed, equipped, and drilled, and ready for active service (271); but in ordinary times giving only an occasional evening and now and then a day for drill or a week for encampment.

A national law passed in 1792 and unrepealed but of course long disregarded requires every able-bodied citizen between the ages of 18 and 45 to be "constantly provided with a good musket or firelock, of a bore sufficient for balls the 18th part of a pound, a sufficient bayonet and belt, 2 spare flints and a knapsack, a pouch with a box therein to contain not less than 24 cartridges", or "a good rifle, shot pouch and powder horn, 20 balls and ¼ lb. of powder", and that "each officer shall be armed with a sword or hanger and a spontoon."

The right to carry weapons is affirmed by the national constitution (85). Many states how-

ever forbid the carrying of concealed weapons.

Some are exempt from military duty in time of peace, such as clergymen, physicians, judges and clerks of courts of record, pilots, mariners, railway conductors and engineers, etc.[1]

In the early days of the republic the militia was trained chiefly at the annual **muster** (from Latin *monstrare*, to show), where the men from all over the state gathered for a week's drill (see page 62). This proved insufficient, and at present there are companies of enlisted men who are drilled in state armories in all cities and principal villages, where full equipments are provided and kept. These companies are known in New York as the **national guard.**

Commissioned officers are those holding commissions (from Latin *con* and *mittere*, to send with, to entrust). They may not be removed from office during the term for which appointed or elected unless (1) by the senate on recommendation of the governor, (2) by the sentence of a court-martial, (3) upon the findings of an examining board, or (4) for absence without leave for a period of 6 months or more (274).

The manner of choosing the **officers** of militia regiments has been fixed by statute (273) as follows: (1) The privates of a company elect the officers of the company.

[1] 212:1898.

(2) The commissioned officers of the various companies elect the field-officers of the regiment or battalion.

(3) The field officers of the regiment or battalion elect the brigadier generals and brigade inspectors.

(4) The governor appoints with approval of the senate the major generals and the commissary general; and absolutely the military secretary, the adjutant general, chiefs of staff departments, and his own aides-de-camps (**273**).

(5) Staff officers are appointed by the commanding officer of the regiment or battalion.

It will be seen that this system is thoroughly representative. Officers are however after election required to pass an examination in English; geography, especially of New York state; arithmetic; American history; and military discipline and tactics.

The national constitution ordains (**41**) that congress may provide for organizing, arming, and disciplining the militia, may prescribe the discipline for training, and may provide for governing such part of them as may be employed in the service of the United States. This is of course necessary, so that when troops are assembled from different states they may be familiar with the same drill.

Congress has power to call out the militia to

execute the laws, to supress insurrections and to repel invasions (40), and has delegated this power to the president; but this refers to the militia in its general sense, as embracing the able-bodied men between 18 and 45. The president has no control over militia regiments. When men are called for, however, it is customary for the state to enlist them through the machinery of these companies, the members having opportunity to enlist for United States service, and the places of the rest being filled by enlistment from outside.

In the war with Cuba enlistment provided sufficient men; but during the civil war the number of men required was so great that it became necessary to resort to **conscription** (from Latin *con* and *scribere*, to write), the number required being chosen by **draft** (from Anglo-Saxon *dragan*, to draw) from the entire number of citizens liable, those drafted being compelled to go or to furnish substitutes.

The militia has been called out 5 times: in the whiskey rebellion of 1794, in the war of 1812, in the civil war of 1861, in the Spanish war, and to suppress the Philippine insurrection.

At the close of the civil war the militia in the United States service numbered more than a million.

During the civil war the governors were of

immense importance, and those like Morgan of New York and Andrews of Massachusetts who responded promptly to the president's calls for troops were among his most powerful assistants.

When necessary to preserve the peace the militia may be summoned by the governor, by the mayor of a city, or by the sheriff. Prompt action is in such cases of the greatest importance. Bryce says (i.509): "In the Pennsylvania riots of 1877 it was the accidental absence of the governor on a tour in the west which enabled the forces of sedition to gather strength. During the most recent disturbances which large strikes, especially among railway employes, have caused in the west, the prompt action of a governor has preserved or restored tranquillity in more than one state; while the indecision of the governor of an adjoining one has emboldened strikers to stop traffic, or to molest workmen who had been hired to replace them."

Sometimes the local and state forces are insufficient to preserve peace, and then the legislature, or the governor if the legislature is not in session, may call on the president for aid (see page 348).

This happened during Dorr's rebellion in Rhode Island.

The required qualifications and manner of election of the **lieutenant governor** are the same

(183–185, 189) as those of governor (see page 191). His principal dignity is the possibility of his succeeding to the duties of governor, should the latter die, or resign, or be otherwise unable to perform his duties (188, 189). If he dies or is incapable of filling the office of governor, or is absent from the state, the duties of the governor are performed by the president pro tem. of the senate (see page 230), or if he for like reasons is unable to assume them, by the speaker of the assembly (189; compare page 370).

He is president of the senate, and in case of tie has the casting vote (189), but not otherwise, since he is not an elected member. He serves on various boards (see page 210). His salary is $5,000 (190).

For comparison of the governor's power with that of the president see page 379.

CHAPTER XVIII

STATE ADMINISTRATIVE OFFICERS

(1) Elected by the People

Besides the governor and lieutenant governor, the people elect every 2 years 5 administrative officers (**192**) as heads of the principal departments of the state business. The elections come in the even-numbered years (**193**). The salary of comptroller is $6,000; of the other four $5,000.

The **secretary of state** keeps the records, books, deeds, maps, etc., of the state; attests the signature of the governor; files the laws passed by the legislature and supervises their publication; sends notices of election, receives the election returns, and notifies persons elected; receives and records all pardons; and reports annually to the legislature statistics of pauperism, crime, and other subjects as required.

The **comptroller** (see page 104) is the financial manager of the state. He directs and superintends the collection of taxes and other amounts due the state (see page 69); audits, examines, and directs payment of claims against the state; and negotiates temporary loans when necessary. He reports to the legislature the receipts and expenditures for the past year, with estimate for the coming year.

The fact that he receives $1,000 more salary than any of the other elected administrative officers, shows how important his duties are considered.

The **treasurer** (see page 69) keeps the state's bank account. He receives and guards the moneys of the state, and pays them out upon warrants drawn by the comptroller, the auditors of the canal department, or the superintendents of the banking department and of the department of public instruction. No money may be drawn from the treasury except by specific appropriation (**174, 49**). He may be suspended by the governor and another person appointed (**198**).

The **attorney-general** corresponds with the county district attorney (see page 78). He prosecutes and defends all suits to which the state is a party; is the legal advisor of the legislature and of the other state officers, and prepares drafts of contracts, etc., needed; and prosecutes criminals in the supreme court when required.

The **state engineer and surveyor** must be a practical civil engineer (**192**). He superintends the survey and sales of state lands, and keeps all records of survey; he inspects the canals and appoints division engineers upon them.

(2) Elected by Joint Ballot

The **superintendent of public instruction** (see page 309), like the regents of the university (see

page 318), and United States senators (see page 455) is elected by joint ballot of the legislature.

(3) APPOINTED BY THE GOVERNOR WITH CONSENT OF THE SENATE

The state pays higher salaries to some officers appointed by the governor with consent of the senate than to those elected by the people.

The **superintendent of insurance**, for instance, gets $7,000 a year; but this is paid by fees from the insurance companies,[1] which it is his duty to investigate, and which must have his authorization. His term is 3 years.

The **superintendent of banking** investigates banks and trust companies, which report to him quarterly. If he finds them insolvent, he closes them.

His salary of $7,000[2] is collected from them.[3] His term is 3 years.

The **superintendent of public works** (**194**) has charge of the public works of the state, the most important of which are the canals, of which he appoints all the officers and workmen. His term expires with that of the governor who nominates him, and who may suspend or remove him. His salary is $6,000. He performs all the duties of the former canal commissioners (**194**). See page 211.

The **state architect** has architectural charge of all the buildings constructed by the state.

[1] 690:1892. [2] 134:1897. [3] 472:1901.

The **excise commissioner** has control of the operation of the liquor tax law (known as the Raines law)[1]. He appoints a deputy; special deputies for the larger counties; and not to exceed 60 special agents to investigate all matters pertaining to the sale of liquors. Taxes are collected on May 1 of each year as follows:

In places having a population exceeding.....	1,500,000	500,000	50,000	10,000	5,000	1,200	*Others*
Liquor to be drunk on the premises.....	$800	$650	$500	$350	$300	$200	$100
Liquor not to be drunk on the premises, in quantities not less than 5 gallons.....	500	400	300	200	100	75	50

In counties where there is a city of the first class these taxes are paid to the special deputy commissioner; in all other counties to the county treasurer, who receives as compensation 1 % in counties containing all or part of a city of the 1st or 2d class, 2 % in those containing a city of the 3d class, and 3 % in all others. Of the amount collected $\frac{1}{3}$ less cost of collection is paid to the general tax revenue of the state, and $\frac{2}{3}$ to the town or city where collected. The term of office is 5 years and the salary $5,000, with $1,800 in lieu of expenses.

The **superintendent of state prisons** (**195**) has control of the state prisons, of which he appoints the agents, wardens, physicians, and chaplains, all other officers of the prisons being appointed

[1] 112:1896.

by the agent and warden, except the clerk, who is appointed by the comptroller. His term is 5 years, but he may be removed by the governor. His salary is $6,000.

The **commissioner of labor**[1] inspects the manufactories of the state, and secures labor statistics, reporting upon the same.

His term is 4 years, and his salary $3,500. He has the appointment of 2 deputies at $2,500, who with him form a **board of mediation and arbitration**, whose duty it is so far as possible to prevent and adjust labor strikes.

The **state agricultural commissioner** promotes farming interests by inspecting butter and cheese factories, appointing 5 expert butter and cheese makers to attend fairs and explain improved methods. He suppresses contagious diseases among cattle, killing them when necessary, the owners to get compensation from the court of claims. He also appoints inspectors to examine into diseases of trees and fruits. He has charge of the state weather bureau. The state agricultural experiment station at Geneva reports to him.

His term is three years and his salary $4,000, with not to exceed $500 for necessary expenses.

The legislature of 1901 appropriated $100,000

[1] 9:1901.

for the expenses of the **state fair commission,** for the state fair held annually in Syracuse.

The **commissioner of health**[1] is the head of the department of health, and must be a graduate of an incorporated medical college with at least 10 years experience as a physician. He makes inquiry as to the causes of disease and the effect of localities, employments, and other conditions upon the public health. He may reverse or modify an order of a local board of health, and appoint a health officer where the local board fails to do so. He reports public nuisances to the governor. There is in the department a **bureau of vital statistics,** to register marriages, births, and deaths.

The term is 4 years, and the salary $3,500 and expenses.

The **health officer of the port of New York** must be a doctor of medicine of 10 years experience, and is resident physician of the Swinburne island hospital. In conjunction with the quarantine commissioners he maintains the quarantine regulations of the port (see page '207). His term is 4 years, and his salary $12,500.

Boards and Commissions

Much of the administrative work of the state is done by boards or commissions. They are

[1] 29:1901.

all appointed by the governor and confirmed by the senate except as otherwise noted.

The **court of claims** audits private claims against the state and of the state against private persons, and decides what amount is due. It meets at Albany on the 2d Tuesdays of January, April, September, and November, and holds adjourned sessions elsewhere as it may determine. The attorney general or a deputy attends each session in behalf of the state.

There are 3 members, 2 and only 2 of whom must be practising attorneys and counsellors in the supreme court. The term is 6 years and the salary $5,000.

The **board of charities** (251) visits and inspects state and local institutions of a charitable, eleemosynary, correctional, or reformatory character. It makes contracts for the maintenance of state paupers.

It is composed of 12 members, 1 from each judicial district with 1 additional from Kings and 3 from New York. The term is 8 years, and the members receive no salary.

A **commission of prisons** (251) visits and inspects all institutions for the detention of sane adults charged with crime. The president, who is designated by the governor, receives a salary of $2,500, and the other two serve without

pay, all being reimbursed for their expenses.[1] It appoints a clerk, at a salary of $3,000, and other employes. The term is 4 years; but when a state officer is appointed, his appointment terminates when his term of office expires.

The **board of railway commissioners** has duties in reference to railways similar to those of the superintendents of insurance and banking. It may examine the books of all companies, and must examine into the causes of accidents that injure persons. It reports to the attorney general any evidences of unsatisfactory management, and makes an annual report to the legislature.

There are 3 commissioners. The term is 5 years, and the salary $8,000. One is selected from each of the two great political parties; the third upon a recommendation of a majority of the New York chamber of commerce, board of trade and transportation, and national anti-monopoly league.

The board of **tax commissioners** investigates the methods of assessment within the state, furnishes local assessors with necessary information, visits every county of the state at least once in 2 years, to see that all property not exempt is assessed at full value, hears appeals from any supervisor who thinks his town unjustly treated in equalization of taxes (see page 65), etc.

[1] 12:1901.

The 3 **quarantine commissioners,** with the health officer of the port of New York, examine incoming vessels to prevent the introduction of contagious disease. All vessels are stopped at the station on Staten island. If contagious disease is found those affected are moved to a floating hospital, and the vessel is fumigated and disinfected.

The term of office is 3 years and the salary $2,500.[1]

The **state assessors** visit each county at least once in 2 years, and prepare facts for the board of equalization. They have power to subpoena witnesses, and to demand information of all local officers.

There are 3, appointed for 3 years; salary $2,500.

The **commission in lunacy** (**251**) visits and inspects public and private institutions for the treatment of the insane. It supervises the expenditures of public institutions, and licenses private ones. It appoints physicians as examiners in lunacy.

It consists of 3 citizens of the state, of whom the president must be a graduate of an incorporated medical college with 10 years experience as a physician, and 5 years experience in the

[1] 268;1900.

treatment of mental and nervous diseases, or 2 years experience in treatment of the insane. Another must be an attorney of not less than 10 years standing.

The term is 6 years, and the salary is $5,000, with $1,200 for expenses.[1]

The state hospitals for the insane are located as shown on the map on page 564.

Each hospital is managed by a board of 7 managers appointed by the governor.

The **civil service commission** conducts the civil service examinations of the state (see page 381), certifying who have passed successfully and in what order. It also inspects the civil service examinations conducted by the municipal civil service commissioners appointed by the mayors in cities (see page 109). It meets in Albany at least once in every month except August.

There are 3 commissioners, not more than 2 of the same political party, at a salary of $3,000[2] and necessary travelling expenses. They appoint a chief examiner at $3,600. The term of office is unlimited, but any member may be removed by the governor.

In New York the constitution provides (**200**) that while the examination shall be as far as possible competitive, honorably discharged soldiers and sailors of the civil war are entitled to preference

[1] 137:1901. [2] 66:1900.

The **forest, fish, and game commission** has charge of the propagation and distribution of food and game fish and shell fish. It consists of a commissioner appointed for 4 years at $5,000 a year, and 2 associate commissioners who with him form the **forest preserve board,** whose duty it is to acquire for the state such lands in the Adirondack park or the forest reserve[1] (see page 567) as it may deem advisable. These associates serve only till Jan. 1, 1903, after which the 2 associates are to be appointed by the governor from the commissioners of the land office (see page 211).

(3) Ex-officio Appointments

The following state boards are made up of state officers whose duties on these boards are ex-officio (Latin, on account of office).

NAME OF BOARD	*governor*	*lieutenant governor*	*secretary of state*	*comptroller*	*treasurer*	*attorney general*	*engineer & surveyor*	*sup't of prisons*	*sup't public works*	*speaker of assembly*	*commission of prisons*	*lunacy commission*
board of canvassers			1	1	1	1	1					
commissioners of canal fund.		1	1	1	1	1						
canal board		1	1	1	1	1	1		1			
commissioners of land office.	1		1	1	1	1	1			1		
board of classification				1				1			1	1
board of equalization*		1	1	1	1					1		
trustees of public buildings..	1	1								1		
regents of the university†	1	1	1					1				

[1] 608:1900.

* The tax commissioners are also included (see page 206).

† Partly ex-officio and partly elective. Includes sup't public instruction. See page 318.

The **board of canvassers** meets on Dec. 15 after each general election, and within 40 days after each special election, and canvasses the certified statements of the county boards of canvassers, tabulates the results, and files them with the secretary of state, who thereupon transmits a copy to each person elected.[1]

The **commissioners of the canal fund** (**196**) have charge of (1) the canal fund, made up of the real estate belonging to the canals, and moneys received for sale of lands, surplus waters, and fines; and (2) the canal debt sinking fund.

The **canal board** (**196**) has general charge of the state's property in canals, as the superintendent of public works (see page 202) has of the working of the same. It determines whether lands taken for canals have been abandoned, or may be sold advantageously, investigates all transactions concerning canals, examines plans made by the state engineer, etc.

The **canals** are shown on page 563. They are forever to remain the property of the state and under its management (**238**). No tolls are to be exacted (**239**), and provision is made for their improvement (**240**).

The **commissioners of the land office** (**196**) have the general care of all lands owned by the state.

The **board of classification**[2] fixes the prices at

[1] 379:1897. [2] 418:1901.

which all labor performed and all articles manufactured in the charitable institutions are furnished to the state or its institutions, except that prices of articles furnished by penitentiaries to the counties in which they are situated shall be fixed by the supervisors (in Kings and New York counties, by the commissioners of charities and correction). The board determines the styles, patterns, designs, and qualities of the articles to be made. For restrictions see **182.**

The **board of equalization** is made up of the commissioners of the land office (see page 211), and the 3 commissioners of taxes (see page 206). It meets at Albany on the 1st Tuesday of September in each year, to examine and revise the valuations of real and personal property of the several counties as returned to the board of tax commissioners, and to fix the aggregate amount of assessment for each county, upon which the comptroller is to compute the state tax.

The **trustees of public buildings** have charge of the capitol, state hall, geological hall, executive mansion, etc., and allot space to the different departments. They appoint a **superintendent of public buildings,** with a term of 2 years and a salary of $5,000. He appoints the employes of the maintenance department at salaries fixed by the trustees.

The **salaries of clerks** and other employes of the state were fixed in 1901[1] as follows:

Grades	*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*
	$360	$480	$600	$720	$900	$1200	$1500	$1800	$2100	$2400

Original appointment is to be so far as possible in the 1st grade, and no higher grade is to be filled from outside if there is a person employed in a lower grade competent for promotion. No promotions are to be made except of those who have served 6 months in the next lower grade.

For tabulated list of state officers see page 5.

[1] 521:1901.

CHAPTER XIX

HISTORY OF LEGISLATION IN NEW YORK

We have seen (page 125) how parliament grew to supreme control in England, and became the model for the legislatures of the colonies. The history of the growth of legislative power in New York is especially interesting.

The **first charter** of New York was granted in 1614 by the legislature of the Dutch Republic to the Amsterdam company, but was superseded in 1621 by a more distinct charter granted to the Dutch West India company, which practically governed New York until it came under control of the English in 1664. The first formal government was established in 1626 under Gov. Peter Minuit, who with a council of 5 men, a secretary, and a sheriff had entire legislative, executive, and judicial power, subject only to the chamber of deputies at Amsterdam.

The **council of twelve, 1641.**—In 1641 Gov. Kieft feared a general Indian war, and summoned all the heads of families to a council, "the first popular meeting ever held in New Netherland, the first recognition of the right of the people to a voice in the affairs of the colony."[1]

[1] Prentice, p. 67.

These elected a council of 12 select men to consider the condition of affairs.

In 1642 this council met again, and asked that 4 persons be chosen from their number to have access to the council, so that taxes might not be imposed on the colony in the absence of the 12. Gov. Kieft dismissed them and forbade them to meet again, thus for the time putting an end to popular government.

The eight men, 1643.—But in 1643 the Indian outbreak became serious, and Gov. Kieft asked the people to appoint 8 men as a council. This body appealed to Holland, complaining against the governor, and in 1644 begged for his recall, which occurred in 1647.

The nine men, 1647.—Gov. Stuyvesant, who followed him, found the people clamoring for self-government of Holland, and finally allowed an election by the people of 18 men, from whom the governor and his council choose 9 men "to advise and assist the governor *when called* upon." In 1699 these nine men petitioned Holland to establish "a suitable burgher government resembling that of the Fatherland", and further urged that the country should be freed from the control of the West India company.

Thereupon Holland ordered that the administration and collection of taxes should be regulated by the people, that a burgher government

should be established in Manhattan, and that the nine men should be continued 3 years and have jurisdiction in cases "between man and man".

In 1653 Gov. Stuyvesant yielded to the order that a burgher government should be established, but he himself named the officers, defined their duties, and assured them they did not in any way limit his powers. A general convention met Dec. 10, in which 8 villages were represented. It prepared an address complaining of the arbitrary acts of the governor. Gov. Stuyvesant ordered the delegates to disperse on pain of his highest displeasure, and the people again appealed to Holland.

In 1658 the two burgomasters (governing magistrates) and five schepens (aldermen) were appointed from men selected by the people, and **in 1660** the schout (prosecuting attorney, judge, and sheriff) was elected by the people. In 1663, when English and Indian hostilities were threatened, Gov. Stuyvesant even sought advice from these municipal authorities, and on their advice summoned

The **landt-tag, 1664,** which was an assembly with representatives from 9 villages, while the governor met with them.

English control succeeded the Dutch on Aug. 26, 1664, but Gov. Nicolls continued the courts

the Dutch had established, and inferior officers were allowed to retain their places until the customary elections.

In February, 1665, the new municipal government was appointed by the retiring members, while the governor named the mayor.

The **Duke's laws,** compiled from those in use in other English colonies, were announced in 1665, establishing four principles that are still a part of the fundamental law of the state: (1) equal taxation (**174**), (2) trial by jury (**113**), (3) obligatory military duty (**269**), (4) freedom of religious worship (**114**).

The **first general assembly, 1683,** was called by Gov. Dongan, to consult with the governor and council "what laws are fit and necessary to be made and established for the good of the people of the colony". It consisted of 17 members elected by the people, and enacted 14 laws. Of these 13 were approved by the governor and council, but the most important one was held back—a charter of liberties and privileges. This granted to every freeholder the right to vote "without let or hindrance", and declared that no tax should be levied except by act of the governor, his council, and "the people met in general assembly", a recognition of representative government. When in 1685 the Duke of York became James II he objected to this last

expression, and refused to confirm the charter; and in 1687 the assembly was dissolved.

Under William and Mary, Gov. Sloughter called the **first royal assembly, 1691,** convened by order of the crown. This, like the assembly of 1683, consisted of 17 members and passed 14 laws. It reaffirmed the charter of liberties.

With succeeding governors the assembly had occasional friction, usually gaining from every contest some additional power. When in 1760 the chief-justice died, Gov. Colden recommended to the crown the appointment of a man from Massachusetts. This the people resented as an attempt to make the judiciary independent of the assembly, and the assembly refused to vote a salary for him. In the issues which led to the revolutionary war, New York was foremost; and in June, 1767, the assembly was forbidden to exercise any further legislative functions until it conformed to the requirements of the king by making provision for British troops. The assembly continued its sessions until permanently dissolved by the governor, Feb. 2, 1768.

The new assembly elected that month proved no more tractable, but after the meeting of the first continental congress it failed by a vote of 11 to 12 to indorse the action of that body, and refused to elect delegates to the second. On May 1 it was prorogued by the governor, and it

never met again. In December, 1775, Gov. Tryon removed part of the records to an armed ship lying in the harbor, where they remained till returned to the city of New York in 1781.

In June, 1776, the other records were removed to Kingston.

The committee of sixty, 1775, was chosen by the patriotic element of New York to carry into effect the suggestions of the continental congress; and this issued a call for a provincial convention, to choose delegates to the second continental congress. After the battle of Lexington it issued a call for an election by freeholders of a new **committee of one hundred** "for the present unhappy exigency of affairs", which took charge of municipal affairs, and also of the election of delegates to

The **New York provincial congress, 1775.** This met on May 22, and provided for the government until the state should adopt a constitution. The date of the battle of Lexington, April 19, 1775, was fixed upon as the day on which the rule of England ceased.

CHAPTER XX

THE LEGISLATURE CONSIDERED AS A WHOLE

The state constitution was adopted April 20, 1777, and the election was held in June.

Bryce says (i.511, 428) the state legislature is so much the strongest force in the several states that we may almost call it the government, and ignore all other authorities. It does not, like congress, get its power from the constitution, but as representing the people has all powers not regulated and limited by the constitution.

The **first legislature** met in Kingston in October, but on approach of the British adjourned and met in January, 1778, at Poughkeepsie. It afterwards met in each of these places, in Albany, and in New York. Albany became the permanent capitol in 1797.

The New York legislature is indirectly modelled upon parliament[1], but with many marked differences, among which the following may be named.

[1] B i.180, 459.

New York legislature	*Parliament*
Limited by national and state constitutions.	Supreme.
Governor has power of veto.	Veto power no longer exercised.
All bills may originate in either house.	Appropriation bills can originate only in house of commons.
Senate elected biennially.	House of lords hereditary.
Assembly, 150 members, elected for one year.	Commons, 658 members, elected for 7 years, but may be dissolved at any time.
No property qualifications for electors of legislators.	Only those can vote for members who occupy dwelling renting for $50 a year.
Salary $1,500.	No salary.

Annual sessions are held, beginning on the first Wednesday in January.

The original constitutions of ten of the states fixed upon 1 year, South Carolina upon 2 years, and Rhode Island and Connecticut upon 6 months. "So essential to republicanism was this principle deemed that the maxim 'where annual elections end tyranny begins' had passed into a proverb."[1] Now however all the

[1] B i.193.

states belonging to the original 13, except Massachusetts, Rhode Island, New York, New Jersey, and South Carolina, have biennial sessions,[1] while many of the states have limited the number of days a legislature may sit, the last restriction often resulting in haste and recklessness in rushing bills through without due discussion.[2]

The **qualifications** prescribed for members are only negative.

No person is eligible to the legislature, who at the time of his election, is, or within 100 days previous thereto has been (1) a member of congress, (2) a civil or military officer under the United States, or (3) an officer under any city government.

If any person after his election to the legislature is elected to congress, or appointed to any office, civil or military, under the government of the United States, or under any city government, his acceptance thereof vacates his seat (**148**).

Of course he must be 21 years of age, and a citizen.

An **oath of office** is required (**280, 82**), with a further oath (**281**) that the member has been concerned in no bribery (see page 160).

This oath is usually administered by the secretary of state, but may be taken previously be-

[1] B i.533, 467. [2] B i.534.

fore any justice of the supreme court, judge of a county court, mayor or recorder of any city, clerk of any county or court of record, or the attorney general or lieutenant governor.

The **salary** is $1,500, with $1.00 for every ten miles travelled in going to and returning from the place of meeting, once each session, on the most usual route.

Senators convened in extraordinary session get $10 a day additional.

In impeachment trials the senators, and the members of assembly not to exceed 9 who are appointed managers of the impeachment, receive $10 a day additional. See page 230.

Members are exempt from arrest in civil suit while attending sessions and for 14 days before and after each session.[1] Each house has power to expel its members upon report of committee.

The legislature consists of the senate and the assembly.

Bryce says (i.461): "The need for two chambers is deemed an axiom of political science, being based on the belief that the innate tendency of an assembly to become hasty, tyrannical and corrupt, needs to be checked by the co-existence of another house of equal authority. The Americans restrain their legislatures by dividing them, just as the Romans restrained their execu-

[1] 682:1892.

tive by substituting two consuls for one king. The only states that ever tried to do with a single house were Pennsylvania, Georgia, and Vermont, all of whom gave it up: the first after 4 years experience, the second after 12 years, the last after 50 years."

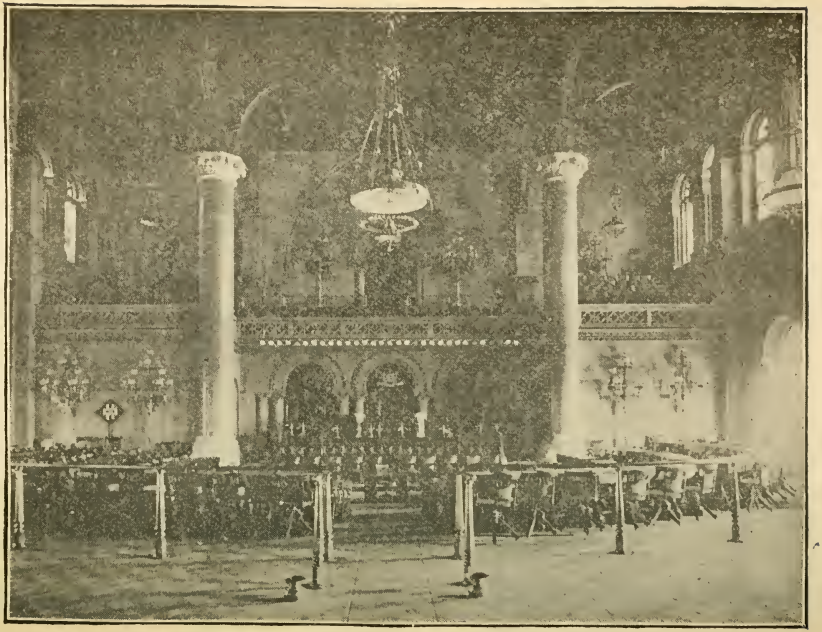
On the other hand the bicameral system is often criticised. "When the object was the creation of public sentiment, two houses secured twice as much publicity as one; but when the object is despatch of public business, two houses result in divided responsibility, with all the consequent delays and chicane."[1]

The two houses have **coördinate power in legislation**;[2] and when vacancies occur elect by **joint ballot** United States senators (see page 455), regents of the University (see page 318), and the superintendent of public instruction (see page 309). Most legislatures follow the English precedent of restricting the initiative in appropriation bills to the lower house as more directly representing the people (see page 451); but there is reason for this in New York, since both houses are equally representative (see page 229).

The legislature has all powers not restricted by the state constitution (see page 136), or delegated to the national constitution (see page 342). Be-

[1] Hadley, p. 78. [2] B i.468.

sides the restrictions in the bill of rights (**112–129**), there are restrictions against private or local bills dealing with matters that should be treated only under general legislation (**158–170**). The tendency to guard against granting privileges to certain corporations is shown by the amendment of 1901. Although the legislature had already been forbidden to grant a corporation any exclusive privilege, annuity, or franchise whatever (**169**), this amendment specifically forbids it to grant exemption from taxation on real or personal property (**169 a**).



THE ASSEMBLY CHAMBER, ALBANY

CHAPTER XXI

THE TWO HOUSES CONSIDERED SEPARATELY

The lower or popular house of the legislature is called in New York the **assembly.**[1]

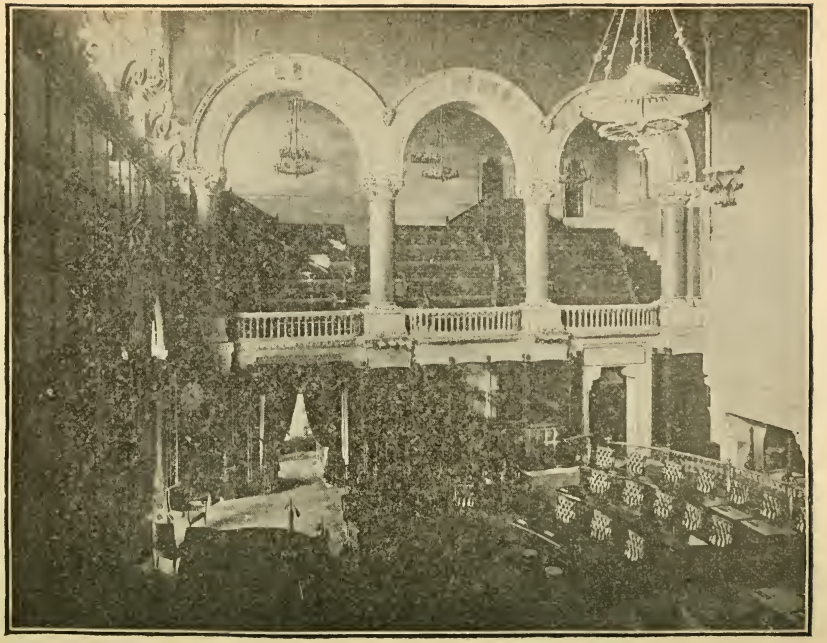
It consists of 150 members (**142**), elected annually by **assembly districts,** the state being divided as nearly as possible according to population by the last census, except that every county has one member save Hamilton, which is united in an assembly district with Fulton. Every other district must be wholly within the limits of a county, and every district must be wholly within a senate district (**144**; see page 229). See map, page 581.

This division of the state gives much more equitable representation than that by towns, which still prevails to some extent in New England (see page 64).[2]

The **organization** of the assembly occurs on the day of the opening of the legislature. The clerk of the last assembly, furnished by the secretary of state with an official list of the members elect, calls the assembly to order, and the first business is the election of a **speaker** (see page 121).

The speaker has the appointment of a multi-

[1] B i.460. [2] B i.563.



THE STATE SENATE CHAMBER, ALBANY

tude of officers[1], such as his own clerk, stenographer, and messenger, a postmaster, 10 general messengers, 2 committee messengers, 35 clerks of committees, 12 stenographers, etc.

The other **officers** chosen by the assembly with their salaries are a **clerk** ($3,500 with $750 for indexing and not to exceed $750 for extra services and engrossing); a **stenographer** ($1,500); the **sergeant-at-arms** ($6.00 a day); and his assistants, a principal and 2 assistant **doorkeepers** ($5.00 per day).

The upper or restricted house of the legislature is called the **senate,** but unlike the upper houses of most legislatures (see page 453) is elected in practically the same manner as the assembly, the only difference being that there are 50 members instead of 150, and that to prevent large cities from having too preponderating an influence in the senate, it is provided that no county shall have more than $\frac{1}{3}$ and no two adjoining counties more than $\frac{1}{2}$ of all the senators (**140**); and if any county having 3 or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the 50 senators, and the whole number of senators shall be increased to that extent (**141**).

[1] 467:1901.

The senate districts are shown in the map on page 581. The state will be redivided into senate districts in 1906, according to the census of 1905. The term is 2 years, and election occurs in the even years.

The **organization** of the senate is similar to that of the assembly, except that since the lieutenant-governor is ex-officio the presiding officer, no speaker is elected. Instead a president pro tempore is elected, to preside when the lieutenant-governor is not present (see page 199).

The senate elects the same officers as the assembly, except the speaker, at the same salaries (see page 229), with the addition of a **financial clerk** ($1,500), who in the assembly is appointed by the clerk.

The **executive** power of the senate lies in its duty to confirm or reject appointments by the governor to such offices as those named on pages 202 to 209.

Its **judicial** power lies in **impeachment** (from Latin *pes*, foot, hence to fetter), which is an indictment brought against public officers by the assembly (218), acting in this case as a grand jury (see page 81).

The court consists of the senators or a majority of them, and the judges of the court of appeals, or a majority of them, and the lieutenant governor unless the charges are brought against the

governor or lieutenant governor (218) when as an interested person he is disqualified. A special oath is required to try the impeachment according to the evidence, a $\frac{2}{3}$ vote of all members present is required for conviction, and judgment does not extend beyond removing the guilty person from office, and disqualification to hold office of honor, trust, or profit under the state; but such person is liable to indictment and punishment according to law (218).

The usual proceeding in the assembly is to appoint a committee to inquire into the alleged unlawful conduct of the officer complained of. If the committee reports in favor of impeachment and the assembly adopts the report, articles of impeachment are prepared and laid before the senate by a committee appointed.

For corresponding power of the national senate see page 458. In England the proceedings are similar, the house of commons finding the impeachment and the house of lords trying it.

CHAPTER XXII

LAW-MAKING POWERS

While the senate has some important executive and one judicial power (see page 230), the main business of the legislature is, as the name indicates (see page 28) to make laws (**136**). That in this it represents the people is kept in mind by the required enacting clause of every bill, "The people of the state of New York, represented in senate and assembly, do enact as follows" (**154**).

Hence the power is absolute (**171**) except so far as it is limited by restrictions set by the constitutions (see page 132) of the state and of the United States, and by the laws of congress. The latter two will be considered later (see page 286). Cooley says: "Plenary power in the legislature is the rule. A prohibition to exercise a particular power is an exception."[1]

On questions upon which they do not like to commit themselves, like the regulation of the liquor traffic, legislators are often glad to relieve themselves of responsibility by referring the matter to popular vote, through a proposed amendment to the constitution.[2]

[1] B i.324. [2] B i.451

In South Dakota a law for referendum (from Latin *re* and *ferre*, to carry back) was recently passed, under which 5 per cent of the voters may by petition presented within 90 days after adjournment of the legislature require any law to be submitted to the people. In practice it has thus far been found impossible to secure the signatures of 5 per cent of the voters to such a petition, showing that the people are fairly satisfied with the action of their representatives. Even on constitutional amendments (see page 134) the vote is usually light. At the general election of 1901 while 332,968 votes were cast in New York county for district attorney, only 174,929 were cast for or against the amendment offered (**169 a**), 155,575 being left blank.

Legislators are however always glad to receive letters from their constituents expressing their views upon questions before them, and much good legislation has been secured and bad legislation prevented by systematic letter-writing to members on the part of those interested.[1] There are few questions upon which a legislator will not vote as his constituents desire, if only he can be sure what they desire.

The restrictions imposed by the constitution of New York are as follows as to **scope**:

[1] B i.523.

The legislature is **powerless** to

pay claims except as legally audited (**172**);

make payments except by appropriation and within 2 years (**174**);

include in an appropriation bill any provision not relating to some particular appropriation in the bill (**175**);

pass a tax bill which does not state the object to which it is to be applied (**177**);

pass any private or local bill embracing more than one subject (**156**);

grant any extra compensation to any public officer (**181**);

give work to convicts the products of which shall be sold except to the state or some political division of it (**182**).

On the following subjects the legislature may pass **general laws** affecting the whole state alike (**171**), but may not pass **special laws**:

changing names of persons (**158**);

opening or closing roads (**159**);

changing county-seats (**160**);

changing place of trial (**161**);

incorporating villages (**162**);

election of supervisors (**163**);

choosing jurors (**164**);

rate of interest (**165**);

conduct of elections (**166**);

changing salaries during term of office (**167**);

railroad franchises (**168, 171**);
any exclusive privileges (**169**);
building bridges, except as specified (**170**);

These restrictions are sometimes evaded. Thus the constitution forbids that an act shall be passed affecting the elections of any single county; but by passing a law applying to all counties in the state having a population of more than 300,000 and less than 500,000, the legislature makes a law general in form that applies only to Erie county.[1]

Bryce refers frequently (i.482, 508, 550) to the tendency of legislatures to go so far into details in their laws as to obliterate executive discretion, specifying the purposes to which money is to be applied, and supervising the expenditure by its own committees. The most questionable use of legislative power is the extent to which it interferes in the government of cities.[2] The population of New York city is nearly one-half that of the state of New York; but the state has power to extinguish the municipality, to govern the city by a single state commissioner appointed for the purpose, or to leave it without any government whatever. The city would have no right of complaint to the national president or congress against such a measure. "Massachu-

[1] Bryce i.529 (see table of population, inside first cover.)
[2] B i.516.

setts has lately remodelled the city government of Boston just as the British parliament might remodel that of Birmingham."[1]

In Pennsylvania a law of 1901 sustained by the supreme court permits the governor to appoint recorders in the place of the mayors of Pittsburg, Allegheny, and Scranton. Another law of 1901 provided for the incorporation of railways either elevated or underground with surface rights in all the streets of the cities not already occupied by railways. In Philadelphia 14 franchises covering 120 miles of streets were at once called for, and though one citizen offered $2\frac{1}{2}$ millions for the franchises, the mayor gave them away for nothing, and with indecent haste.

These requirements are made as to **manner**:

To ensure deliberation, every bill must be printed in its final form and put on the desks of the members at least 3 days prior to its final passage (**155**).

To ensure intelligent voting, every bill changing an existing law, must have the law as it exists inserted (**157**) for comparison.

To ensure a representative majority, every bill appropriating money or property must have (*a*) if for local or private purposes the assent of $\frac{3}{5}$ of all the members elected to each house (**173**); and (*b*) if for (1) laying a tax, (2) creating a pub-

[1] 3 i.407.

lic debt, (3) appropriating public money, or (4) releasing any claim of the state, a majority vote taken by yeas and nays, $\frac{3}{5}$ of all the members elected to constitute a quorum.

A **quorum** (a Latin word meaning "if whom") is the number of persons required in a legislative body to do business.

In England the number required for a quorum in the house of lords is 3; in the house of commons 40.[1]

Usually a majority of these elected constitutes a quorum (**150**), and a majority of these may pass a bill. Thus of the 150 members of assembly 76 constitute a quorum, and 39 may pass a bill. Note however:

upon appropriation bills $\frac{2}{3}$ *of all members elected* must give assent (**173**);

upon the final passage of bills imposing a tax, creating a debt, or making an appropriation of public trust money $\frac{3}{5}$ *of all members elected* must be present (**178**);

to repass a vetoed bill the votes of $\frac{2}{3}$ *of all members elected* are required (**191**).

For comparison of the requirements in congress see page 430.

[1] B i.196.

CHAPTER XXIII

HOW LAWS ARE MADE

The process of making a law begins by the introduction of a bill, which is in the form of a law or statute, and if passed and approved without amendment becomes a statute.

A bill may be introduced (*a*) by order of the house; (*b*) by message from the other house; (*c*) by report of committee; or (*d*) by a member individually, in the senate by rising in his place and asking leave to present it; in the assembly by depositing it in the "bill-box".

By the last method, two copies of the bill must be deposited, endorsed by its title, and giving the name of the member introducing it. The clerk has charge of the box, and at the close of each day's session records each bill and hands one copy to the presiding officer for examination, while the other copy is filed with the librarian for public inspection.

At the next regular session the presiding officer announces the introduction of all such bills for their **first reading** (by title), and refers them by consent of the house to their appropriate committees (see page 245).

The committee may report against the bill, in which case if the house concurs the bill is rejected. But if it reports it, with or without amendments, it is placed on the order of **second reading.**

Here the bill is subject to debate and amendment, and must be read section by section. If amended it must be reprinted, and reported by the committee on printed and engrossed bills as correctly printed, before going to the **third reading** (**155**). Here no amendments are permitted except to fill blanks or by unanimous consent, or reported by a committee to which it has been referred.

The three readings are compulsory, and must be on different days. A bill reported by a committee to which such bill has not been referred must pass through first and second readings as though introduced by a member.

Sometimes the rules as to readings are suspended, and a bill is introduced and passed immediately, without reading or reference to a committee.

When bills have been favorably reported by the committee and are on their final passage, a minority will sometimes delay their passage by what is called obstructive debate, a series of speeches made without hope of influencing the majority but to consume time. This is some-

times called **filibustering** (corrupted from English *freebooter*).[1] The remedy is what is called "**the previous question**", which is moved in the form, "Shall the main question now be put?" and when ordered closes the debate and brings the house to a vote on the main question.[2]

Both houses sometimes go into **commitee of the whole**, the speaker selecting some other chairman and himself taking a seat upon the floor. It can not conclude any business and it can not adjourn; but when it has completed the discussion desired, some member moves that the committee do now rise, the presiding officer resumes the chair, and the chairman reports the business transacted in the committee. If the committee desires to adjourn, it first rises and reports progress to the speaker. The object of this committee is to give greater freedom in debate; the ayes and noes can not be demanded; in the senate committee there is no limit to the number of times a member may speak, and in the house committee the previous question does not apply.

Sometimes a bill before the house involves party interests to such an extent that it is important to command every vote. In such case a caucus (see page 176) of the members of the party in the house is called, by the results of

[1] B i.131. [2] B i.131.

which every member of the party is supposed to abide.[1]

If the bill is **passed** by receiving the required vote, it is delivered by the clerk to the other house, where it goes through the same process. If **amended** in this other house it must be returned to the first house for concurrence, without which concurrence the bill is defeated.

If passed in the same form by both houses, it is delivered by the clerk of the house in which it originated to the governor.

If **signed** by the governor (**191**), it is sent by him to the secretary of state, and is numbered in turn as a chapter of the laws of the year in which it is passed. After the adjournment of the legislature all bills in the governor's hands to become laws must be signed within 30 days.

The frequent references to laws in this volume are by chapter and year; thus, 18:1901 is chapter 18 of the laws of 1901.

If **left unsigned** by the governor, (*a*) if retained by him 10 days (Sundays excepted) during the session of the legislature, it becomes a law without his signature (**191**); (*b*) if the legislature by adjournment within the 10 days prevents its return, the bill does not become a law (**191**); (*c*) after the final adjournment of the legislature, it does not become a law (**191**).

[1] B i.201.

If **vetoed** (see page 103) by the governor, it is returned by him with his objections to the house in which it originated. The house must enter the objections upon its journal and proceed to reconsider the bill. If it is then passed again by $\frac{2}{3}$ of the members elected, it is sent with the governor's objections to the other house, and if approved by $\frac{2}{3}$ of the members elected to that house becomes a law (**191**); otherwise not.

In **appropriation bills,** the governor may approve part of the items, and object to one or more of the others, in which case the disapproved are again considered by the two houses as in case of return of entire bills (**191**).

This privilege was first given to New York governors by the constitution of 1846, and is unquestionably a wise one. Without it a corrupt legislature could force him to approve appropriations that he knew to be steals on penalty of stopping all the machinery of government for want of money to carry it on. It has been adopted in other states.

The veto is a legislative power, and makes the governor in some sense a third house of the legislature. It was formerly possessed by the kings of England, but it has not been exercised since 1807, and as the constitution is now interpreted has passed away. The king has no such veto. He must sign his own death-warrant if

the two houses unanimously send it up to him, or abdicate.[1]

"Considering that the arbitrary use, by George III and his colonial governors, of the power of refusing bills passed by a colonial legislature had been a chief cause of the revolution of 1776, it is to the credit of the Americans that they inserted this apparently undemocratic provision (which, however, existed in the constitution of Massachusetts of 1780) in the constitution of 1789. It has worked wonderfully well." * * * "It is an interesting commentary on the tendencies of democratic government, that in America reliance is coming to be placed more and more, in the nation, in the state, and in the city, upon the veto of the executive as a protection to the community against the legislative branch."[2]

The **checks** against majorities provided by the constitution are many, and have proved efficient. Thus a bill fails

(1) if passed only by one house;

(2) if passed by both houses and vetoed by the governor, unless repassed;

(3) if decided by the court of appeals to be unconstitutional.

Sometimes an executive has refused to execute a law passed over his veto, so that it becomes inoperative until another governor is elected.

[1] Bagehot, The English constitution. [2] B 1.54, 283, 469.

In the national constitutional convention it is probable an absolute veto would have been given to the president had not Benjamin Franklin protested, saying it had been tried in Pennsylvania, where no good law could be passed without a private bargain with the governor.

Of the presidents, Washington vetoed 2 bills, Madison 1, Monroe 1; John Adams, Jefferson, J. Q. Adams, none; Grant 41, Cleveland 343. The first bill passed over a veto was in Tyler's administration.

CHAPTER XXIV

LEGISLATIVE COMMITTEES

We have seen that when first introduced a bill is referred to a **committee**, and that the house does not take action upon it till reported by the committee; of most bills the fate is practically decided in committee,[1] which can amend the bill, or delay reporting it till too late for action, or report it adversely.[2]

The house may direct the committee to report forthwith, and may restore an amended bill to its original form; but in practice the decision of the committee is rarely overruled.[3]

Hence the most important work of each member is done not in the general sessions but in the committee, and the house "has become not so much a legislative assembly as a huge panel from which such committees are selected."[4] As the committees are named by the presiding officer, it is in his power by his choice of members largely to shape the legislation of the house, as well as to reward his friends and punish those who have opposed him.[5]

[1] B i.150, 648; ii.252. [2] B i.153. [3] B i.148, 154, 157.
[4] B i.155. [5] B i.136.

As the presiding officer of each house is, unlike the speaker of parliament (see page 451), a political partisan, he gives the most important places on the committees to members of his own party. Every member is, however, placed upon some committee, and most of them are placed upon several.

Besides special committees, appointed to deal with questions that arise outside the regular work of standing committees, both houses have the following standing committees:

1. judiciary,
2. codes,
3. revision,
4. railroads,
5. canals,
6. commerce and navigation,
7. insurance,
8. banks,
9. agriculture,
10. trades and manufactures,
11. cities,
12. villages,
13. internal affairs,
14. Indian affairs,
15. military affairs,
16. public health,
17. taxation and retrenchment,
18. public education,
19. privileges and elections,
20. rules,
21. public printing,
22. printed and engrossed bills.

These committees deal practically with the same subjects though under different titles:

senate	*assembly*
23. finance,	24. ways and means,
25. forest, fish, and game laws,	26. fisheries and game,
27. penal institutions,	28. state prisons.

The following committees are found only in one house:

senate

29. miscellaneous corporations;
30. roads and bridges.

assembly

31. electricity, gas, and water;
32. excise;
33. public institutions;
34. soldiers home;
35. charitable and religious societies;
36. unfinished business;
37. general laws;
38. labor and industries;
39. public lands and forestry;
40. claims;
41. federal relations.

The senate committees have from 3 to 11 members each; the house committees, 5 to 11 members.

The most important committee in the assembly is that of ways and means, and its chairman is the leader of his party in the house.[1]

Some bills deal with a subject embraced under the jurisdiction of two or more committees, and

[1] B i, 146, 173.

its fate may depend upon which of these committees it is referred to.[1]

From the fact that the work of the legislature is so largely done in committees, there is comparatively little scope for oratory.[2] The new member who has had some reputation in his local lyceum, and expects to sway the assembly by his eloquence, soon finds that the legislature is not conducted on the plan of school exhibitions. Macaulay says: "Armies have won victories under bad generals, but no army ever won a victory under a debating society." Parliament was made large in order to influence public opinion. "The abandonment of the duty of debate as to the common interest, and the substitution of the work of negotiation as to the private and partisan interests of the several districts, have tended to convert the representative assembly from an object of public confidence to one of public distrust."[3]

The committee system is probably inevitable,[4] but it has many dangers. In the first place the responsibility is divided. Since the action upon a bill is by a committee of several members, no one of them can be held personally accountable, —he may claim to have been outvoted. On the other hand, as there are few members on a committee each vote is powerful, and a corporation

[1] B i.153. [2] B i.141; ii. 268. [3] Hadley, p. 96. [4] B i.150.

whose interests are affected can afford to pay an enormous price for the vote of a member subject to temptation.[1]

A member's action may be deflected by other influences than a money bribe, and it is important for great corporations, always on guard lest their interests be injured by legislative action, to keep at Albany agents skilled in dealing with members of the legislature, known as **lobbyists** (so called from the lobby, the space just outside the hall, where members meet their friends).[2]

These agents are often ex-members, of wide acquaintance and long experience, and are frequently paid much higher salaries than members receive. They are so numerous that they are often spoken of as the third chamber.

Georgia has pronounced lobbying a crime, and California has declared it to be a felony.[3] It is claimed that corporations have the right to employ a lobbyist as a party in a law-suit employs an attorney; but Bryce urges (i.650) that in a law-suit the judge is surrounded by safe-guards of habit and opinion that would cut short his career were he to yield to such influences as often have weight with the members of a committee.

How strong some of these influences are regarded is shown by the provisions in the con-

[1] B i.516, 648; ii.152, 156. [2] B i.156. [3] B i.445.

stitution against bribery (282) and even against accepting passes on railroads (285).[1]

Action on a committee may also be unduly influenced by other members of the committee. Two members, each of whom has a bill to get through, or one of whom desires to prevent his railroad from being interfered with while the other wishes an item inserted in the appropriation bill, make a compact by which each aids the other. This is **log-rolling**:[2] you help me roll my log, which is too heavy for my unaided strength, and I help you to roll yours.

Sometimes a member brings in a bill directed against some railroad or other great corporation, merely in order to levy blackmail upon it. This is technically called a **strike.**[3] Bryce says (ii.153): "An eminent railroad president told me that for some years a certain senator regularly practised this trick. When he had brought in his bill he came straight to New York, called at the railroad offices, and asked the president what he would give him to withdraw the bill."[4]

Some lawyers who are elected to the legislature receive from powerful corporations retainers as lawyers, without the expectation of any service outside the legislature.[5]

[1] B ii.154. [2] Hadley, p. 79. [3] B i.518. [4] B ii.154. [5] B ii.155.

From such instances there has arisen a tendency to undervalue the work of the legislature, to suspect the integrity of the members, and to refer to membership as conferring no dignity. The fact remains, however, that it is, as it was intended to be, fairly representative of the people of New York. Election to the assembly is rightly regarded an honor, and election to the senate is a distinguished honor. The various districts are represented not only by the men the electors have chosen but by men who have a right to speak for their electors. If an assemblyman or a senator is corrupt and known to be corrupt and yet is re-elected, it is reasonably certain that he comes from a corrupt district.

But with all the criticisms that may be made upon the men New York has chosen to represent her, it is still true that the body of civil and criminal law they have enacted is to-day in the forefront of modern jurisprudence, an honor to the state and a panoply to its citizens.

CHAPTER XXV

COURTS OF LAW

We have considered the executive and the legislative departments of the state government, and we come now to the third, the judiciary. The primary condition of government is that it has laws and that it enforces them. The laws may be elementary and insufficient; they may not all be enforced. But unless there is a recognized force that compels obedience to law there is no government; there is **anarchy** (from Greek *a* privative and *arche*, government, without government), where every man does as he happens to please, and there is no compelling authority to preserve order and administer justice.

Law in its general sense is a rule of action, as the law of gravitation. As a rule of conduct, it is in its relation to a person's conscience the moral law or the law of nature; as based upon the teachings of the Bible it is known as revealed or divine law (see page 15). As used in civics it is an officially established rule for regulating social action, prescribing some things and forbidding others. In a republic it is the controlling will of the people expressed as to a particular rule of conduct (see page 232).

The **common law** is the accumulation of legal decisions through many generations, the decision of each judge becoming a precedent for other judges, and the repeated decisions of many judges becoming fixed law (see page 59). "This is not law," remarked a judge before whom Daniel Webster was pleading. "It *was* law until your honor spoke," was the reply.

The justice's court is "the humblest court in the land, the court of greatest antiquity, and the court upon which all other courts are founded."[1]

In the early English town meetings justice between man and man was administered directly, the old men stating the custom in such matters, and the entire community voting upon each case. Such cases formed the basis of the Common Law of England. Justices of the peace were appointed in 1194, and received that name under Edward III (1327–1377), who empowered them to try felonies. See pages 29, 36.

In provision for jury trial in the federal constitution (**90**) the term common law is used in contra distinction from equity, admiralty, and maritime jurisprudence, in all of which the courts determine both law and fact. The supreme court had been vested (**68**) with appellate jurisdiction both as to law and fact. This amendment (**90**) was to correct the misapprehen-

[1] Thorpe.

sion that the supreme court was authorized to review the decision of the jury in mere matters of fact. New York authorizes the common law (127).

Common law is based upon the accumulated common sense of generations, and usually appeals to the common sense of the present generation. When it fails to do so it is disregarded, or is supplanted by **statute law** (see page 132).[1] The law is an instrument for the protection of the people, and when it begins to oppress the people it will be overturned (127). "In a free country all decisions of the courts rest upon the general consent and conscience of the people themselves."[2]

"Bentham may be said to have overthrown a theory which was historically false and phophetically true, and substituted one which was historically true and prophetically false. Things have been law, not because they were just or even logical, but because the courts enunciated them. But it is safe to prophesy that this state of things will continue only so long as the courts are respected by the public as being at once just and logical. It is right as well as convenient for the lawyer to assume that whatever the courts command will be law; but only because the courts show themselves clearer-sighted than the

[1] B i.482. [2] B ii.445.

body of the nation. The authority of the English courts, while nominally derived from the crown, has been practically derived from their own good sense and progressiveness." [1]

On the other hand, the machinery of the law sometimes seems to the people insufficient, and then what is called **lynch law** deals with crimes that seem likely to go unpunished. Sometimes a volunteer jury is summoned, but often the supposed criminal is simply seized and executed. [1]

Such peremptory punishment is common in the southern states, and not rare in some of the northern states, but it is often mistaken and always exceedingly dangerous.

There was formerly a further distinction between courts of common law and courts of **equity** (from Latin *aequus*, equal, just) or **chancery** (from Latin *cancelli*, the crossbars which surrounded the seat of judgment), the special province of which was to relieve persons from hard bargains, where the stricter rules of other courts would be inadequate. There are cases where the forms of the law have been followed and no direct fraud or deceit can be shown, and yet where a strict construction of the law would work injustice, such as in partnerships, in the administration of trusts, and where by mistake

[1] Hadley, p. 74; see also p. 30. [2] B ii.453.

or accident or the fault of another hardship would follow unjustly.

But the latitude given the judges in these courts aroused suspicion that this laxity was sometimes abused, and the popular party of the 17th century in England opposed them.[1] Chancery courts were abolished in New York in 1846 (**201, 206**).[2]

Some states have established in place of chancery courts a **tribunal of arbitration** (from Latin *arbiter*, one who comes to look on); or a **court of conciliation** (from Latin *con* and *calare*, to call together), where commissioners of conciliation are elected like justices of the peace, and are associated with the justice in trying cases, no attorney being allowed to be present, the effort being to bring the parties to an agreement. Should the effort fail, the case is tried as usual, but the proceedings before the commissioners form no part of the evidence, and the commissioner can not testify. It is said that in Norway nine-tenths of the litigation in civil cases is settled in this way.

Municipal or **civil law** relates to business and property relations. It includes **commercial law**, dealing especially with the regulation of trade and commerce. The issue is as to money due and the control of property.

[1] B i.480. [2] B i.481.

Criminal law deals with violations of the law, the end being to punish the guilty person by fine, by imprisonment, or by death. Prosecution is brought "in the name of the people", showing that the law is to protect the people.

A **court martial** (from Latin *Mars*, the god of war) is a military court composed of officers, to try offences against military law. The court for the trial of **impeachments** (218) has already been described (see page 230).

The judicial department has two functions: (1) to interpret what the law is and whether it is constitutional (if not, it is not a law [see page 132]); (2) to pronounce upon its application to particular cases, when disputes arise. Before the law can be executed, its application to the particular instance involved must often be determined and this is done by trial in courts of law.[1] For the former, see page 286. We shall consider the latter function first, because it was historically first.

Originally legislative, executive, and judicial functions were all united in the same person, the sovereign, or in the same body, as in the town-meeting (see page 26). On some matters of English law the house of lords is still the court of last appeal. "In most countries the courts have grown out of the legislature; or rather, the

[1] B ii.247.

sovereign body, which, like parliament, was originally both a law court and a legislature, has delivered over most of its judicial duties to other persons, while retaining some few to be still exercised by itself."[1]

The second charter of Massachusetts tended to separate legislative and judicial functions, as in appointing circuit judges to hold court in the counties. The idea of complete separation was developed before the revolution.

The Englishmen who came to America as colonists were used to these courts:

1. Justices' court, or petty session.

2. Justices' court in quarter sessions, which heard appeals from (1), and considered more important cases.

3. Assize courts, held by justices sent out from the high courts of the kingdom, which tried the most important cases.

4. High courts, to hear appeals, and cases involving matters of state.

5. The king's council, especially the house of lords and the privy council.

Under its first charter, the judicial business of the colony of Massachusetts was in the hands of the governor and council, of magistrates whom they appointed, and of local magistrates elected in the towns. The 18 members of the

[1] B i.235.

governor's council held court for small cases in the towns where they lived. In other towns commissioners of small causes were chosen. The governor and assistants held courts once a month, and 4 great courts a year were held for important cases. In 1691 county courts were organized, and justices of the peace were appointed in the different counties by the governor.

This was the general colonial type:

1. Justice of the peace, petty sessions.
2. Justices of the peace, quarter sessions.
3. Courts of intermediate grade, held by judge of governor's council or high court.
4. Supreme court.

A man has a right to plead his own case in court, but in practice he does it through attorneys. It is a common saying that a man who is his own lawyer has a fool for a client.

An **attorney** (from Latin *ad* and *tornare*, to turn in a lathe) is in general one legally appointed by another to do business for him. An **attorney at law** is a practitioner in a court of law, legally qualified to prosecute and defend actions.

A **counsellor at law** (from Latin *consilium*, counsel) is one legally qualified to give legal advice and manage cases in court. In England the term for attorney is solicitor and that for counsellor is barrister, the solicitor carrying on the practical and formal part of the suit. In the

United States no distinction is made, and the general term **lawyer** is commonly employed.

To be admitted to the New York bar, which is the term employed for certifying legal qualification as a lawyer, a person must be (1) 21 years of age, (2) a citizen of the United States (women are admitted), (3) of good moral character; (4) (*a*) with a certificate of having passed the regents examinations, or (*b*) a graduate of an academy, or (*c*) have had one year in a college or university; (5) must have served 3 years as a clerk in the office of a practising attorney of the supreme court; and (6) must have passed a satisfactory examination before the state board of examiners.

Of the clerkship 2 years may be spent in a law school, and college graduates may deduct 1 year.

It is manifest that the success of a judicial system will depend upon the **judges** (from Latin *judex*, a judge) who preside in the courts.

In 11 of the 13 colonies the judges were appointed by the governor. Under the 13 original state constitutions 5 left the appointment to the governor with consent of the council, 1 to the governor and legislature in joint ballot, 6 to the legislature, and 1 to the people. Massachusetts judges are still appointed by the governor and council, for life or during good behavior.[1] Con-

[1] B i.484, 602.

necticut, which had vested the appointment in the legislature, and Mississippi, which had left it to the people, have given it to the governor with approval of the legislature or the senate.[1] In the 10 years ending 1886, Florida was the only state to take the appointments from the legislature or governor and entrust it to popular vote.[2]

Whether judges should be **appointed** or **elected** is a much debated question. The arguments may be briefly summarized as follows:

For appointment	*For election*
The people being unable to estimate the qualifications of candidates elect inferior men.	If the people are not to be trusted in the selection of officers, then our whole republican system is on a false foundation.
An appointing officer, being held responsible, takes care to choose superior men.	An appointing officer is likely to give preference to personal or political friends.
The judge looking forward to reëlection, hesitates to render a decision likely to be unpopular.[3]	An appointed judge must remember in his decisions those to whom he owes his appointment.
Abler men will accept the places, as the honor	To have pleased a single man is not so

[1] B i.489. [2] B i.489. [3] B i.265.

is greater and the risks of a political campaign are escaped.

great an honor as to have pleased an entire community.

A man is unworthy of election as judge if his record is such that he fears to have it investigated.

In New York the decision of the people has been in favor of an elective judiciary.[1]

On the other hand the judges of national courts have always been appointed (see page 282).

There is also the question as to **term of office.** If a judge is appointed for life, he is independent of fear or favor. Only 4 states now give judges this tenure, the term of office varying from 2 years in Vermont to 21 years in Pennsylvania.[2]

[1] Prentice, pp. 379, 405, 531. [2] B i.484.

CHAPTER XXVI

THE STATE COURTS

We have spoken of the judicial system of the town (see page 30) and of the county (see page 76). The judicial system of the state consists of the supreme court and the court of appeals (**201**).

The **supreme court** hardly deserves its name (a Latin word meaning highest), for there is a higher court, the court of appeals. In several states the name for this is the **superior court**, while the court of appeals is called the supreme court. It is often called the **circuit court** (**209**) because most of the districts include several counties, and the judges travel from one county to another.

It has both original and appellate jurisdiction (see page 77), in law and equity (see page 255), and in all actions civil and criminal not provided for in the lower courts.

It consists of **7 6 justices**, in 8 judicial districts (**201**), as shown on page 569.

The **qualifications** are that the candidate be at the time an attorney or counsellor (see page 259) in a court of record (see page 268) of the state (**226**). A justice may not hold any other office

or public trust (215), or practise as attorney or act as referee (226).

He may be **removed** on concurrent resolution of both houses of the legislature if ⅔ of the members of each house concur (216). He may not serve after the year in which he became 70 years old (217).

Justices are elected on the general ticket, for a term of 14 years (207). They may be removed only for cause and by concurrent action of the legislature (216). Vacancies are filled till Dec. 31 next following the next general election by the governor, the senate to concur if in session (207).

The salary is $6,000, with an annual allowance for expenses (226), but may be increased by the board of supervisors to not more than $14,000.[1]

The **procedure** of a civil suit in the supreme court is as follows:

The party bringing the action or **suing** (akin to Latin *sequi*, to follow) is called the **plaintiff** (from Latin *plangere*, to beat the breast, to lament), and the suit begins by the service upon the party against whom the action is brought, the **defendant** (from Latin *defendere*, to ward off), of a **summons** (see page 30), issued by some justice upon affidavit of the plaintiff, summoning him to appear in court to make answer to com-

[1] 299:1901.

plaint. Should the defendant fail to appear, judgment may be issued for the plaintiff; but if good reason for the defendant's non-appearance is subsequently given, the judgment may be reopened on payment of costs.

The defendant usually appears not in person but by attorney; and the plaintiff files or serves his declaration or **complaint** (from Latin *con* and *plangere*, as above) setting forth the grounds upon which he claims judgment. To this within 30 days the defendant makes **answer** by filing his **plea** (from Latin *placere*, to please) or **demurrer** (from Latin *mora*, delay), stating his side of the case. These papers are called **pleadings.** If there is agreement as to facts no trial is necessary, and the justice decides the question as to the law.

If the pleadings differ as to facts, these must be settled by a **trial** (from Latin *terere*, to thresh, a place where facts are threshed out of the evidence) to which witnesses are summoned by **subpœna** (see page 30).

A justice presides, and unless waived by agreement, a jury is impanelled (see page 83), after which the plaintiff's lawyer makes a brief statement of his case and calls his witnesses. When each has finished his testimony, the defendant's lawyer may **cross-examine,** or ask questions bringing out facts favorable to the defendant's

side, or tending to show that the witness has testified falsely.

When the plaintiff's lawyer has called all his witnesses, he "rests"; after which the defendant's lawyer makes his statement of the case, and calls his witnesses, who may also be cross-examined. Afterward each lawyer may call witnesses for rebuttal. Then the lawyer for the defence sums up the case, reviewing the evidence, stating points of law, and endeavoring to make it appear that the law and the facts are on his side. The lawyer for the plaintiff then sums up, trying to impress the jury that the law and facts are on his side. Then the judge delivers a **charge** to the jury, stating the law, and calling attention to the bearing upon the decision of the facts, which they alone are to determine.

The jury retires; and if it can agree (see page 85) brings in its **verdict** (from Latin *verum*, true, and *dictum*, saying). After this, or decision by the court if there has been no jury, the successful party enters **judgment**, a decree by the court.

If the plaintiff wins, this is for the amount given in the verdict; and if the verdict is over $50, also for **costs**, a fixed scale of charges to reimburse the successful party for the legal expenses of the suit. This limitation is to discourage litigation over small claims.

If the verdict is for the defendant, then he enters judgment for costs.

Unless the judgment is paid within 30 days, an **execution** (from Latin *ex* and *sequi*, to follow) is issued against the property of the defeated person, and the sheriff may sell sufficient of it to cover the amount of judgment (see page 67). In case of appeal to a higher court, security must be given by the defeated party.

In criminal cases the procedure is much the same. The state is always the plaintiff, the district attorney conducts the case for the state; and instead of a summons there must be an **indictment** (see page 82) followed by **arrest** (from Latin *re* and *stare*, to stand), and usually by **bail** (see page 141). The prisoner is then in custody of his bondmen, and if they think him likely to avoid trial they may cause his arrest at any time. If accused of a crime punishable by death, bail is not granted.

Before indictment, to prevent a suspected person from escaping before the grand jury sits, there is often an **examination** before a justice of the peace or some other magistrate (see page 30), who has upon complaint issued a warrant upon which the suspected person is arrested and brought before him. If the officer thinks the arrested man should be tried he **commits** him to await action of the grand jury to prison, from which he is usually released on bail. He has the right to a writ of *habeas corpus* (see page 138),

if he thinks he can persuade some judge that he is unlawfully held.

When **arraigned** (from Latin *ad* and *ratio*, called to judgment) for trial, if he has not money to secure counsel the state furnishes him a lawyer (see page 141). He is called upon to **plead** guilty or not guilty. If he pleads guilty he is sentenced; unless the crime be of murder, in which case the plea of guilty is not accepted and trial is insisted upon, as in the case of Czolgosz, the assassin of McKinley. If he pleads not guilty, the trial goes on. The proceedings are then similar to those in civil cases. The national constitution makes provision that every prisoner have a trial **speedy** and **public** (89).

If the prisoner is convicted, the judge pronounces **sentence** (from Latin *sentire*, to think) —that is, announces what the punishment will be.

If the sentence be wholly or partially a **fine** (see page 142), execution may be levied against property as in civil judgments. In some cases, like assault, fraud, and libel, a man sentenced to pay a fine may be imprisoned till he does so.

Many cases, both civil and criminal, may be tried in either county or supreme court, and some may be tried in either supreme or federal court (see page 279).

The supreme court is a **court of record**; that is the proceedings are taken down by an official

stenographer, and copies may be had by paying for the copying. When a case is appealed the proceedings of the trial are printed in full, sometimes filling many large volumes. The important decisions are printed, and form precedents (see page 253).

The federal constitution provides that full faith and credit shall be given in each state to the acts, records, and judicial proceedings of every other state (72).

The proceedings we have described are those of courts at **trial terms.** Each justice also holds **special terms,** where without a jury he hears and decides **motions,** applications for some order desired, as to change the place of trial.

Besides the writ of habeas corpus (see page 138), justices are often called upon to issue a **mandamus** (Latin, we command), to compel a civil officer to perform some duty he has neglected.

Another frequent exercise of power is the **injunction** (from Latin *in* and *jungere*, to join), restraining an officer from some action; another is a **stay** of execution of a sentence.

The legitimate purpose of an injunction is to prevent waste and irreparable injury to property, and the mandamus and injunction and stay are properly used only when the cases can not be reached by ordinary prosecution in the court; but in practice they are often issued after hear-

ing only one side, by a judge not properly in jurisdiction, through his favor or his ignorance of the facts. There is frequent complaint against this **government by injunction.**

Still another writ issued by justices is that of **quo warranto** (Latin, by what warrant), to inquire by what authority a person or a corporation exercises certain powers.

A **writ of error** is granted for the purpose of bringing before the justice for review the record of proceedings in court in which it is claimed by the party applying for the writ there have been errors of law committed.

All these powers of the supreme court are within their **original jurisdiction.** But the court has also **appellate** (see page 77) jurisdiction.

Cases tried in a lower court may be taken by the defeated party to a higher court either by appeal, in which case the whole case is tried over; or by **certiorari** (Latin, to be certified), in which case the testimony given in the lower court is received and only questions of law are reviewed.

In the colonial courts the appeal was to the English privy council.[1] In the judicial system of New York there is appeal from the justice's court to the county court; from the county court or from trial term in the supreme court to special term; from special term to the appellate division;

[1] B i.16.

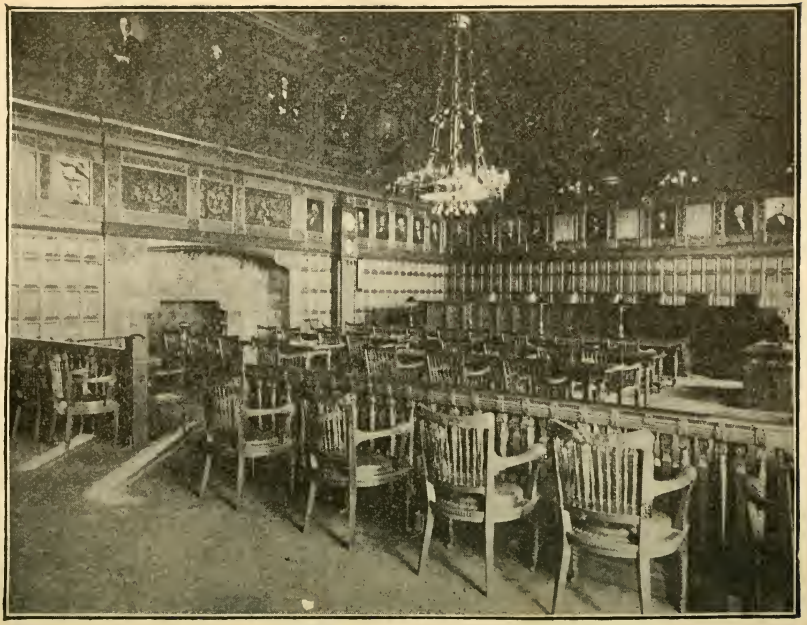
and from the appellate division to the court of appeals.

The **appellate division** of the supreme court (**203**) is created expressly to hear appeals from the supreme courts. It consists of 22 justices appointed by the governor (**204**) from the 76 (see page 569). The state is divided into 4 judicial departments (**202**), the first containing the city and county of New York, and the others bounded by county lines containing as nearly as possible an equal number of inhabitants (see map, page 568). There are 7 justices in the 1st district, and 5 in each of the others.

For each judicial department the governor designates a presiding justice (**204**), who must reside in the department and act during his term of office. The others are appointed for 5 years, and a majority must reside in the department.

Not more than 5 justices sit in any case; 4 constitute a quorum, and 3 must unite to make a decision (**203**). No justice may sit in review of a decision made by him (**206**).

The justices of the appellate division in each department fix the time and place for holding trial and special terms, assign justices, and make rules (**205**). They may also appoint a reporter (**204**); but the seal of the court is that of the county clerk of the county in which the court is held.



COURT OF APPEALS CHAMBER, ALBANY

The **court of appeals** consists of a chief judge and 6 associate judges, elected on the general state ticket for a term of 14 years (**210**). They may not hold any other office (**215**) and may be removed like justices (**216**). They may not serve after the year in which they become 70 years old (**217**). Vacancies are filled as in the supreme court (**211**).

Except where the judgment is of death it reviews only questions of law (**212**). It takes 5 to constitute a quorum, and 4 to make a decision (**210**). It may correct or reverse all decisions of the lower courts except a unanimous decision of the appellate division (**212**). There are some limitations as to cases subject to appeal, but it must not depend on amount involved (**212, 213**).

The salary of the chief judge is $10,500, of the associate judges $10,000; with $2,000 for travelling expenses. It elects its own clerk and reporter, and has chambers in the state capitol, but sometimes sits elsewhere, as in Saratoga Springs. For list of judges see page 566.

The appellate court either (1) affirms the decision of the lower court, (2) reverses it, or (3) grants a new trial. In the last case it is tried in the same or a similar court, but with a different jury. Should the court of appeals affirm a criminal conviction, the only further appeal is to the governor for pardon, reprieve, or commutation (see page 193).

HALL OF THE NATIONAL SUPREME COURT, WASHINGTON

CHAPTER XXVII

UNITED STATES COURTS

In some cases there is possibility of further appeal, even from the court of appeals. The **supreme court** of the United States is the final arbiter in all cases (1) in law and equity arising under the federal or state constitutions, federal laws, or treaties; (2) in cases of admiralty and maritime jurisdiction; and in controversies, (3) to which the United States is a party, (4) between citizens of different states, (5) between citizens of the same state claiming lands under grants of different states, and (6) between a state or the citizens thereof and foreign states, citizens, or subjects (**67, 94**). From its decisions there is no appeal (**67, 68**).

This court was a necessity. The decisions of state courts might differ, and there must be a final resort to establish the law of the nation. The confederation had no such tribunal, and the decisions of the state courts were capricious and conflicting. Without this power the national government would be at the mercy of the state courts, with no power to compel the courts to

perform their functions, or to enforce their decisions.[1]

It will be observed that the appellate power of the supreme court is limited to actual cases brought before it. When in 1793 President Washington asked it to give opinion on the construction of the treaty with France, it declined to comply.[2]

Appeals from a state to a national court are allowed only when as decided by the highest court of the state the judgment rendered is claimed to be in violation of the national constitution or of some law ort reaty of the national government (67). Such appeals are therefore few. The most frequent have been in connection with the constitutional prohibition upon the states to make a law violating a contract. Several have been taken with reference to the 14th amendment (99). Some states have made laws forbidding the manufacture and sale of intoxicating liquors. The owners of property used for such manufacture have appealed to the supreme court that the law deprived them of property without due process of law. But the supreme court has ruled that such loss of property was incidental to the legitimate police power of the state.

[1] B. i.228–236. For full justification and explanation of their power, see chief justice Jay in The Federalist, No. 80.

[2] B i.257, 433.

Besides its appellate jurisdiction the supreme court has original jurisdiction (68) (1) in all cases affecting ambassadors, and other public ministers and consuls; (2) in all cases where the state is a party.

The limitation of original jurisdiction to cases brought before it is to ensure that the power of the court be judicial, not political. Thus a dispute arose between the states of Iowa and Missouri as to the northern boundary. This is fixed by the constitution of Missouri as on a parallel passing through the rapids of the Des Moines river. Iowa held that the rapids were several miles south of the point claimed by Missouri, and when a Missouri sheriff attempted to serve a writ on a man in the disputed territory, the Iowa governor ordered out the militia. But it was agreed to submit the matter to the supreme court. A case was made up and argued, the court decided in favor of Iowa, and there was no bloodshed. But the supreme court could not have acted had not the case been submitted.

The supreme court is composed of a **chief justice** and 8 **associate justices**, any 6 constituting a quorum (see page 237). It holds one term a year at Washington, beginning on the 2d Monday of October.

As a single court could not consider all the cases that come properly under federal jurisdic-

tion, congress is authorized (66) to establish such **inferior courts** as may be necessary. It has thus far established three kinds of inferior courts, district courts, circuit courts, and circuit courts of appeal, besides a court of claims.

Every state has at least one **district court,** and the larger states have 2 or 3 districts, each with its own court. Usually each district has its own judge, but in a few cases one judge has charge of 2 districts. New York has 3 district courts, each with its own judge.[1]

This court has only original jurisdiction. It may try any crime against the United States committed within the district, except those punishable by death.

The crime must be a violation of federal statute law; there is no national common law (see page 253)[2]. But when a national law is violated, such as robbing the mail, counterfeiting, or evading revenue laws, the trial must be before a national, not before a state court.

On the other hand violations of state laws, such as those against assault, theft, murder, etc., can be tried only in state courts, and these constitute the vast majority of cases. Where there are both national and state laws, as against counterfeiting, the government that first arrests the offender is allowed to try him and punish him.

[1] B i.228 (see map, page 586.) [2] B i.233, 323.

Civil cases arising in the administration of the national laws may also be tried in this court. The plaintiff who bases his claim on a national law may bring suit in a district court; and if a case is begun in a state court, the defendant if he bases his defence upon a national enactment may have it removed to a national court.[1]

Bryce says (i.234; see also 228): "The French or English reader may ask how it is possible to work a system so extremely complex, under which every yard of ground in the Union is covered by two jurisdictions, with two sets of judges and two sets of officers, responsible to different superiors, their spheres of action divided only by an ideal line, and their action liable in practice to clash. The answer is that the system does work, and now, after a hundred years of experience, works smoothly. It is more costly than the simpler systems of France, Prussia, or England, though, owing to the small salaries paid, the expense falls rather on litigants than on the public treasury. But it leads to few conflicts or heart-burnings because the key to all difficulties is found in the principle that *wherever federal law is applicable federal law must prevail*, and that every suitor who contends that federal law is applicable is entitled to have the point determined by a federal court."

[1] B i.228.

There are 9 **circuit courts,** the 1st and 4th with 2 judges; each of the others with 3. The 2d circuit includes New York, Vermont, and Connecticut. Of the 3 judges in 1901, 2 live in New York city.

To each circuit there is also allotted a justice of the supreme court, who is to hold a court in it at least once in 2 years. The court may be held by the circuit judge alone, by the supreme court circuit judge alone, or by both together, or by either or both sitting along by the district judges of the district where the circuit court is held,[1] thus bringing together judges from the 3 national courts.

This court has only original jurisdiction, which extends over the higher criminal offences against the laws of the United States. Suits under copyright or patent laws are brought in this court.

In civil cases, ordinarily the amount involved must exceed $2,000; but it has jurisdiction irrespective of amount in such cases as those begun by the United States against national banks, or by persons who claim that some right or privilege granted by the United States is infringed by a state law.

In 1891 a **circuit court of appeals** was established in each of the 9 circuits.

This court has only appellate jurisdiction; but

[1] B i, 228.

this is final in certain minor cases, as where the decision depends on whether the parties are aliens or citizens, those in admirality cases, and those arising under the patent, the revenue, and the criminal laws.

It reviews all cases originally begun in district or circuit courts except those reviewable only in the supreme court.

Besides this graded system in United States courts there is a **court of claims** similar to that in New York (see page 206), to hear and determine claims against the United States. As the government can not in the regular courts be sued by a citizen except by its consent (94),[1] this court gives persons having claims for contract or otherwise an opportunity to bring suit. If this court decides the claim to be valid, congress usually passes a law to pay the money. Appeal lies to the supreme court. The court of claims is composed of a chief justice and 4 associate justices, with salaries of $4,500 each.

Each **territory** (see page 358) has also a **supreme court** of 3 or more judges, appointed for 4 years.

The law it administers is partly national, all national statutes being construed to take effect, where properly applicable, in the territories; and partly local, created in each territory by its own statutes. Appeals, where the sum in dispute is

[1] Federalist, No. 81.

above a certain value, go to the national supreme court.[1]

There is considerable territory within the limits of the states that has been purchased by the government for arsenals, dock-yards, etc., and where state authority does not reach. It is provided (69) that in such cases congress may determine where the trial shall be held.

The **District of Columbia** (see page 360) has a **supreme court** of 1 chief justice and 5 assistant justices, with original jurisdiction in law and equity. Any one of them may hold a district court for the district of Columbia, with powers similar to those of judges of the district courts.

Appeals may be taken to a court of appeals, consisting of the chief justice and 2 associate justices; and from this, in some cases, to the national supreme court.

All **judges** of United States courts are **appointed** by the president with consent of the senate; and, except those in territories, **for life,** or during good behavior. Any judge who has held his commission 10 years may when 70 years of age resign and receive for the rest of his life the salary he has been receiving.

Bryce says (i.226): "They hold office during good behavior, i. e., they are removable only by

[1] B i.555.

impeachment. They have thus a tenure even more secure than that of English judges, for the latter may be removed by the crown on an address from both houses of parliament. Moreover, the English statutes secure the permanence only of the judges of the supreme court of judicature, not also of judges of county or other local courts, while the provisions of the American constitution are held to apply to the inferior as well as the superior federal judges."

And again (i.265): "The federal circuit and district judges, small as are their salaries, are in most states individually superior men to the state judges, because the greater security of tenure induces abler men to accept the post. Being irremovable, they feel themselves independent of parties and politicians, whom the elected state judge, holding for a limited term, may be tempted to conciliate with a view to re-election. Plaintiffs, therefore, when they have a choice of suing in a state court or a federal court, frequently prefer the latter; and the litigant who belongs to a foreign country, or to a different state from that in which his opponent resides, may think his prospects of an unbiased decision better before it than before a state tribunal."

The salaries of United States judges are as follows:

	chief judge	*other judges*
supreme court	$10,500	$10,000
circuit court of appeals		6,000
circuit court		6,000
district court		5,000
territorial court		3,000
supreme court, District of Columbia	5,000	4,500

As in case of the president (see page 371) the salary of federal judges can not be increased or diminished while they are in office.

All three United States courts have **officers.** The supreme court has a **clerk**; a **marshal,** with duties corresponding with the court duties of a sheriff (see page 67); and a **reporter.** Each circuit court of appeals appoints its own **clerk** and **marshal.**

Each district court has a **clerk** and a **district attorney,** with duties corresponding with those in the county (see page 78), and a **marshal.**

The clerk is appointed by the judge. The marshal and the district attorney are appointed by the president and senate, and are also officers of the circuit court. They are under direction of the attorney-general (see page 396), who thus has a network of federal authorities covering the entire country, and independent of state courts and state authorities.[1]

[1] B i.234.

In each of the smaller districts into which the districts are divided the circuit judge appoints a United States **commissioner,** corresponding with a justice of the peace (see page 36), who passes on inferior maritime questions, assists in collecting evidence, makes examinations, and holds for trial. Any judge or magistrate of either state or federal government may order the arrest of a person charged with crime against the United States; and for this purpose a state officer acts as United States commissioner, and is responsible only to the federal government.

The appointment of some of the inferior officers of the courts (**62**) is the only **executive** function possessed by United States courts.

The judgments pronounced in civil cases by federal courts are executed by the officers of these courts. All other offences and disorders whatsoever are left to be dealt with by the duly constituted authorities of the state. They may summon national power in case of disturbances[1] (see page 198).

The only chief justice appointed from New York has been John Jay* (1789–94). The associate justices have been Brockholst Livingston† (1806–23), Smith Thompson† (1823–43), Samuel Nelson* (1845–72), Ward Hunt* (1872–82), Samuel Blatchford† (1882–93), Rufus W. Peckham (1895–).

[1] B i.323. * Resigned. † Died in office.

CHAPTER XXVIII

CONSTITUTIONALITY OF STATUTES

The powers of the courts thus far considered have been in reference to particular cases brought before them. We have now to consider their greatest and most important power, to pronounce upon the constitutionality of a law.

The supreme law of the land is the national constitution, the national laws that do not violate it, and the treaties made in accordance with it; and this supreme law is law in every state, anything in the laws or constitution of the state to the contrary notwithstanding (**81**; see page 132).

Bryce says (i.243, 266): "The duty of the judges is as strictly confined to the interpretation of the laws cited to them as it is in England or France; and the only difference is that in America there are laws of four different degrees of authority, whereas in England all laws (excluding mere by-laws, privy council ordinances, etc.) are equal because all proceed from parliament. These four kinds of American laws are:

I. The federal constitution.

II. Federal statutes.

III. State constitutions.

IV. State statutes.

"The American law court therefore does not itself enter on any conflict with the legislature. It merely secures to each kind of law its due authority. It does not even preside over a conflict and decide it, for the relative strength of each kind of law has been settled already. All the court does is to point out that a conflict exists between two laws of different degrees of authority. Then the question is at an end, for the weaker law is extinct." * * *

"The supreme court is the living voice of the constitution, that is, of the will of the people expressed in the fundamental law they have enacted. It is, therefore, as some one has said, the conscience of the people, who have resolved to restrain themselves from hasty or unjust action by placing their representatives under the restriction of permanent law. It is the guarantee of the minority, who, when threatened by the impatient vehemence of a majority, can appeal to this permanent law, finding the interpreter and enforcer thereof in a court set high above the assaults of faction."

Again (i. 348; see also 248, 375) he calls the supreme court "not so much a third authority in the government as the living voice of the constitution, the unfolder of the mind of the people

whose will stands expressed in that supreme instrument."

English courts have no such function. An act of parliament can not be invalid, because parliament is omnipotent; in judging between two conflicting enactments they have only to examine the dates and decide in favor of the latter. But congress is not omnipotent; its powers are limited by the constitution, and where it has tried to exceed those powers its statutes are not laws and can not be enforced.[1]

Hence as the province of parliament is broader than that of congress and our legislatures, so the power of English courts is narrower than that of ours.

"In England, if a court has construed a statute in a way unintended or unexpected, parliament sets things right next session by amending the statute, and so prevents future decisions to the same effect. But American history shows only one instance in which an unwelcome decision on the meaning of the constitution has been thus dealt with, viz., the decision, that a state could be sued by a private citizen, which led to the eleventh amendment (**94**), whereby it was declared that the constitution should not cover a case which the court had held it did cover."[2]

But few laws have been pronounced unconsti-

[1] B i.245, 430. [2] B i.248.

tutional by the supreme court—up to 1901 only 6. It is the maxim of the court that no law is to be so pronounced "unless the defect of power to pass it is so clear as to admit of no doubt. Every doubt is to be resolved in favor of the validity of the law."[1]

Yet it has suffered attacks, first on account of its decision that it had jurisdiction to entertain suits by private persons against a state. The jurisdiction was removed by the 11th amendment (see page 288), but the states learned to fear it as an antagonist. Its decision in the Dred Scott case (1857) that a section of the "Missouri compromise" was illegal, was denounced by the republican party, and its doctrine as to citizenship was subsequently negatived by the 14th amendment (99).

But its reversal in 1871 and again in 1884 of its decision of 1870 making greenbacks legal tender for debts went further to shake public confidence. The decision of 1870 was rendered by a vote of 5 to 3. Congress increased the number of judges from 8 to 9, and within a year secured an opposite decision by a vote of 5 to 4.

This suggests the possibility when congress and the president are in accord, of affecting the decisions of the court by adding to the number of judges, and appointing those known to have

[1] Justice Swayne, U. S., vs. Rhodes and others.

fixed opinions upon the matter to be decided. The New York constitution fixes the number of judges (210), but the national constitution leaves the number of judges to be fixed by congress (66). In 1866 when congress was opposing President Johnson, to take away his power of appointment it reduced the number of judges, then 10, by providing that no vacancy should be filled till the number was reduced to 7. When President Grant came into office it raised the number to 9 and the legal tender decision was reversed by the altered court.[1]

Bryce says (i.366): "Jefferson denounced the doctrine laid down in the famous judgment of Chief Justice Marshall in the case of *Marbury* v. *Madison;* thus Jackson insisted that the supreme court was mistaken in holding that congress had power to charter the United States bank, and that he, knowing better than the court did what the constitution meant to permit, was entitled to attack the bank as an illegal institution, and to veto a bill proposing to re-charter it. Majorities in congress have more than once claimed for themselves the same independence."

As to the effect of public opinion on laws see page 503.

[1] B i.261, 263, 269.

Comparison of Courts

	no. of judges	*term of years*	*salary*	*jurisdiction**	*page*
state					
justices	4	4	$2 per day	o, ci, cr	30
county	1	6	$800 to 10,000	o, a, ci, cr	76
surrogate	1	6	800 to 10,000	o, ci	77
supreme	76	14	6,000 to 14,000	o, a, ci, cr	263
appellate division	22	5	‡	a, ci, cr	271
claims	3	6	5,000	o, ci	206
appeals	7	14	12,000†	a, ci, cr	273
national					
district	74	life	5,000	o, ci, cr	278
circuit	25	"	6,000	o, ci, cr	280
appeals	**			a, ci, cr	280
claims	5	"	4,500	o, ci	281
supreme	9	"	10,000†	o, a, ci, cr	275
territorial	3+	4	3,000	o, a, ci, cr	281
District of Columbia	6	life	4,500†	o, a, ci, cr	282
appeals	3	"	6,000†	o, a, ci, cr	282

*o = original; a = appellate; ci = civil; cr = criminal.

† The chief judge $500 more.

‡ Selected from the 76 justices.

** Held by district, circuit, or supreme judges.

CHAPTER XXIX

TAXATION

Taxation (from Latin *taxare*, to touch sharply) is the most important function and the most vexatious problem of government. It has caused most of the political revolutions, as for instance our own (see page 127), and the French in 1789.

Money must be raised. There are officers and soldiers and sailors and workmen to be paid, buildings to be erected and maintained, supplies to be furnished. The expenditure for public schools alone in New York was in the year 1900 nearly 35 millions. New York city spent in 1901 nearly 100 millions. The civil war cost the national government in 1865 a billion dollars for a single year. The entire amount of money spent by the local, state, and national governments averages more than $10 a year for every man, woman, and child in the United States. In some cities it averages more than $30 a year.

All these vast sums must be raised by **taxes,** the enforced, proportional contribution from persons and property levied by the state by virtue of its sovereignty for the support of government and for public needs.[1] In other words taxes are

[1] Cooley.

levies upon private property for public purposes.

An **enforced** contribution is necessary, because voluntary contributions would be unreliable. The continental congress depended upon the voluntary action of the states to collect the taxes apportioned, and the taxes were uncollected (see page 330). The contribution must be **proportional,** that all may be treated alike. It is levied upon **property** as well as persons, because property is often owned by non-residents, and is always the measure of ability to pay. It is levied by virtue of the **sovereignty** of the state (see page 118), because otherwise there would not be power of collection.

The **justice** of taxation is manifest. The state demands and receives taxes from the subjects of taxation within its jurisdiction that it may be enabled to carry into effect its mandates and perform its manifold functions; and the citizen pays from his property the portion demanded in order that, by means thereof, he may be secured in the enjoyment of the benefits of organized society.[1] No man objects to the requirement that he shall put postage-stamps on letters, or pay his bills for city water, and yet these are forms of taxation; in a well managed government all taxation is equally for the benefit of those who pay it.

[1] Cooley.

It might be objected that some men are taxed for what they can not get benefit from, as when a man without family is taxed for schools. But the reply is that schools are necessary not only for the children who go, but for the general welfare and safety of the community, in which every man shares (see page 304).

But while the justice of equitable taxation for necessary public purposes is recognized, the people taxed want to be assured that the money raised is needed for these purposes and is used for them; and that it is so raised that every man may bear his proportional share. It is the glory of the English system of government that from the first it has insisted that they who pay the taxes shall have voice in levying them (see pages 120 to 123), and the colonies dissolved their allegiance to England when George III attempted to impose upon them taxation without representation (see page 127).

In the United States all power of taxation rests in the people and their representatives (**5, 26, 47, 49, 172, 177, 178, 181, 191, 230–236, 249, 250**), so there is no excuse for unwillingness to pay one's share of the expenses of government as provided by law.

Indirect Taxes

Some taxes are **indirect**; that is, they are not assessed upon persons as individuals, or accord-

ing to their wealth; and though assessed upon one person are really paid by another. Practically most of the state tax is raised in this way, in 1901 only $10\frac{1}{2}$ out of 26 millions being raised by direct tax. Thus the excise law (see page 203) requires every liquor dealer in New York city to pay $800 a year for the privilege, but he gets it back by raising the price or lowering the grade of the liquor sold, so that the tax is eventually paid by his customers. This law produced the state in 1901 more than 4 millions, or more than $\frac{1}{7}$ of the money required for the state government.

Such taxes on business or occupations, franchises, privileges, etc., are called **specific** (from Latin *species*, a particular thing, and *facere*, to make), as opposed to **general** taxes which, apply to all alike.

The **collateral inheritance tax** is also a large source of revenue to the state. On estates of $10,000 or more there is a tax of 1 % for money distributed among lineal descendants or those in close relation; and on estates of $500 or more of 5 % when it is distributed among those not lineal descendants or in close relation. Bequests to religious corporations are excepted. This tax amounted in 1901 to more than 4 millions.

A recent and most profitable addition to the indirect taxes of the state is that on **franchises**

(see page 154) granted to corporations.[1] Formerly corporations had been taxed only on their real property (see page 147); but it is manifest that the exclusive privilege of running electric cars on a busy street is in itself property and should be taxed as such. So a tax is levied upon most corporations of $\frac{1}{4}$ mill upon each 1 % of annual dividends, when such dividends amount to 6 % or more upon the par value of the stock; otherwise $1\frac{1}{2}$ mills upon the capital stock of the corporation employed within the state. This produced in 1901 about a million, and the entire amount received from corporations was nearly 5 millions.

The national government is supported entirely by indirect taxes. These include **excises** (from Latin *ex* and *caedere*, to cut), commonly referred to as the **internal revenue**, a tax upon the production of goods, as for the distillation of whiskey, the manufacture of beer and tobacco, or the refining of oil; and **duties** on **imports** (from Latin *in* and *portare*, to carry), goods brought into the United States from other countries. Duties on exports are forbidden (**48**).

The states are forbidden (**52**) to levy duties upon imports or exports. This is not only to reserve the revenue to the national government but to ensure uniformity of duties (**26**). Under the confederation (see page 324) each state could

[1] 558:1901; the original law was passed in 1899.

levy whatever duties it choose, and there was much jealousy and retaliation.

The rate of duties levied on imported goods is called the **tariff.** When levied merely to support the expenses of government it is a **revenue tariff**; but it is manifest that the articles upon which a tariff is laid will be higher in price, and hence those who manufacture the same articles here will be able to command a higher price for their goods. A tariff so adjusted as to favor certain industries which it is desired to protect is called a **protective tariff.**

The theory of protection may be illustrated thus. Suppose silk which could not be manufactured here for less than $2.00 a yard could be imported from France so as to sell at $1.50 a yard. Manifestly no such silk would be made here, because it could not be sold except at a loss. Now if a duty of 60 % be put upon French silk, it must be sold here at $1.50 + .90 = $2.40 a yard, and hence the American manufacturer can sell at the same price with a profit.

This has been an issue more or less prominent between the political parties since the first high protective tariff was laid in 1832, when South Carolina refused to pay the duties, attempting what was called **nullification** (from Latin *nullus* none ; see page 360). Those opposed to a protective tariff declare for **free trade**, arguing that

in the case given everybody in the country who wants that kind of silk has to pay 40 cents a yard extra, for the benefit of a manufacturer. On the other hand it is argued that industries thus established have often eventually reduced the price of the article far below what the imported articles used to cost.

Duties may be **specific** (see page 295), that is so much upon every pound or yard, or gallon; or **ad valorem** (Latin, according to value), a percentage on the value; or both combined.

In emergencies the national government has levied additional indirect taxes. Thus in July, 1862, when the civil war made much money needed, besides requiring all valuable papers to be stamped, duties were levied on many manufactured articles, on carriages and plate, on various trades and occupations, this revenue amounting in 1866 to more than 300 millions. During the war with Cuba stamps were required on many business documents, but most of them were discontinued after July 1, 1901.

Direct Taxes

Direct taxes are (1) those laid on individuals as individuals, like the poll-tax (see page 159); and (2) those laid upon property at a certain percentage upon its assessed value.

The national government may levy direct taxes, but only in proportion to the population

(47); in other words two states of equal population must pay the same amount, though one be ten times as wealthy as the other. The power has been exercised only 5 times—in 1798, 1813, 1815, 1816, and 1861, in each case for only 1 year. From 1861 to 1871 the national government collected a tax on incomes. In 1894 a law was passed taxing all incomes of more than $4,000 a year; but it was pronounced by the supreme court unconstitutional because it was a direct tax and not apportioned among the states according to population.

The state government levies a small direct tax (see page 300), but nearly all the direct taxes are local and levied by the school district (see page 54), the town (see page 32), the county (see page 65), the village (see page 88), and the city (see page 99).

The town, county, and state taxes are all collected together by the collector (see pages 39, 91) or treasurer (see pages 91, 104); and are paid over on or before Feb. 1 to the county treasurer (see page 69); except that town collectors pay over to the highway commissioners (see page 41) the sums raised for highways and bridges, to the overseers of the poor (see page 40) the money raised for that purpose, and to the supervisor (see page 34) the money raised for town charges.[1]

[1] 158:1901.

The county treasurer pays over to the comptroller (see page 200) the amount due the state.

The amount of tax levied upon each piece of property depends upon the **assessment** (see page 38). This is made originally by the town, village, or city assessors (see pages 38, 91, 104); is equalized by the board of supervisors (see page 65), with appeal to the tax commissioners (see page 206) and revision by the state assessors (see page 208), and final determination by the board of equalization (see page 212). This gives the aggregate assessed valuation in the state, and the rate of state tax is found by dividing the amount to be raised by the aggregate assessment. In 1901 this was as follows:

Assessed valuation	*Amount required*	*State tax*
$5,461,302,752	$10,704,153.39	$.00196

The same assessed valuation is used for the much larger local taxes, so that owners of real property are tempted to secure assessment below the real value.[1] On the other hand, since the constitution limits the amount of indebtedness of any city to 10 % of the assessed valuation, a corrupt administration that wanted to raise more than that amount might increase the assessment accordingly. The charter for 2d class cities limits the amount of taxation in any year to 2 %, and in 1900 the assessment of property in

[1] B i.492.

Syracuse was arbitrarily raised $\frac{1}{3}$ above its value in order to make it possible to levy the amount the extravagant administration needed to pay its bills.

Some property is exempt from taxation, such as national, state, and municipal public buildings, school-houses, churches, burying grounds, the property of scientific and agricultural societies, of literary and charitable institutions [1] not conducted for pecuniary profit, and a homestead so far as purchased with the proceeds of a pension. [2] National and state bonds and municipal bonds issued to retire existing indebtedness are also exempt.

So great is the temptation to evade taxation of personal property (see page 151), that it pays only a fraction of its proportionate burden of taxation. It is often concealed; and when this is impossible there is much latitude of conscience in swearing to the amount of debts that should be charged up against it, the law requiring assessment only upon personal property owned in excess of personal debts. [3]

For this and other reasons many have advocated what is called the **single tax**, on land only, which can not be concealed and may be levied uniformly, the theory being that the taxes thus paid will be recovered by rise in rental and thus

[1] B i.497. [2] 618:1901. [3] B i.492; Hadley, p. 76.

by increased prices of goods made or sold on the premises, or by people who live upon the premises, and so on.

A constitutional amendment adopted in 1901 forbids the legislature to exempt from taxation on real or personal property any person, association, firm, or corporation (**169 a**).

The rate of duties levied on imports is in some cases affected by treaties (see page 467) of **reciprocity**, under which the United States grants a lower rate of duty than to those from other countries, on condition that like reduction is made upon certain goods imported there from the United States. President Roosevelt said, in his message for 1901:

"Reciprocity must be treated as the handmaiden of protection. Our first duty is to see that the protection granted by the tariff in every case where it is needed is maintained, and that reciprocity be sought for so far as it can safely be done without injury to our home industries. * * *

"Subject to this proviso of the proper protection necessary to our industrial well-being at home, the principle of reciprocity must command our hearty support. The phenomenal growth of our export trade emphasizes the urgency of the need for wider markets and for a liberal policy in dealing with foreign nations.

Whatever is merely petty and vexatious in the way of trade restrictions should be avoided. The customers to whom we dispose of our surplus products in the long run, directly or indirectly, purchase those surplus products by giving us something in return. Their ability to purchase our products should as far as possible be secured by so arranging our tariff as to enable us to take from them those products which we can use without harm to our own industries and labor, or the use of which will be of marked benefit to us."

Some times improvements are needed which it would be impossible to pay for at once, and of such permanent importance that it seems just that a subsequent generation should pay for it in whole or in part. For this purpose **bonds** (see page 46) are issued (**227**). The state is not allowed to give its credit in aid of any individual association, or corporation (**230, 249**); and except in case of war (**232**) may not contract debts to exceed a million dollars (**231**), except by vote of the people at a general election (**233**). The restrictions on towns, counties, villages, and cities (**250**) have already been noted (see pages 32, 65, 94, 100).

CHAPTER XXX

THE COMMON SCHOOLS

Since in a republic every citizen is a voter, its safety requires that its citizens be sufficiently schooled to vote intelligently, and its prosperity demands that they have an education fitting them for improvement and enjoyment.

This has been recognized in the United States from the first. The ordinance of 1787 (see page 609) declares:

"Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

Education is the republic's self-defence. Of all the sources of poverty and crime ignorance is the most fruitful; and besides the harm they do individually, ignorant and vicious voters unite to elect officials of their kind, which produces corrupt laws and corrupt administration. Massachusetts makes it the duty of her teachers to impress upon their pupils "the principles of piety and justice, and a sacred regard for truth, love of their country, humanity, and universal benevolence; sobriety, industry, and frugality,

chastity, moderation, and temperance; and those other virtues which are the ornament of human society, and the basis upon which a republican constitution is founded."

New York was fortunate in that its early settlers, the Dutch, had learned in their own country to appreciate education. As early as 1629 the West India company required the colonists to supply a minister and a schoolmaster, and the Dutch schools were always free. After the English conquest the Dutch schools were left undisturbed, but they received no government support, the idea of taxing people for the support of schools not prevailing in England. Gov. Cornbury, who came to office in 1702, established schools, chiefly as a means of driving out the Dutch language and establishing the church of England.

In 1793 the regents (see page 318) recommended the establishment of a system of common schools; and in 1795 the first public school law was passed, appropriating $50,000 a year for 5 years to maintain public schools. In 1812 this annual appropriation was made permanent, and towns were authorized to levy a tax equal to their share of the appropriation. In 1814 this town tax was made compulsory, under penalty of losing the appropriation.

These amounts were not sufficient to furnish

a good school: so it was customary to make up the deficiency by a **rate bill,** each parent paying his share in proportion to the attendance of his children. In 1867 this rate bill was abolished, and since then the state has provided for free common schools, wherein all its children may be educated (**256**).

Even the text-books are furnished in some schools to all children, and in all schools to children whose parents are unable to pay for them, the object being to make education possible to every child.

But some children did not care to go to school, and were not compelled to. Some were not allowed to go, their parents profiting by their labor. Some nominally went but were frequent **truants,** being absent so much that they did more harm to their classes than they got good themselves.

So in 1894 a **compulsory law** was passed, which requires that (*a*) every child between 14 and 16 not regularly employed, and (*b*) every child between 8 and 12 shall be in attendance upon instruction as many days between Oct. 1 and June 1 as the public school shall be in session; and that (*c*) every child between 12 and 14 shall attend school upon at least 80 consecutive school days, and in addition upon all school days when not usefully employed, and be instructed in at

least the common branches of reading, spelling, writing, arithmetic, English grammar, and geography.[1]

To execute this law **attendance** or **truant officers** (see page 44) are appointed, and truant rooms or truant schools are often established, where truants are confined, clothing as well as food being furnished when necessary. Parents are liable to fine and imprisonment if they do not either cause their children between 8 and 16 to attend school or notify the truant officer that they are unable to do so. Employers are fined $50 if they employ children between 8 and 12 during the time the public school is in session, or employ any child between 12 and 14 who does not present a certificate that he has complied with the law regarding attendance.

If a child attends a private school, the character of the institution and the number of hours a day must be the same as in the public schools.

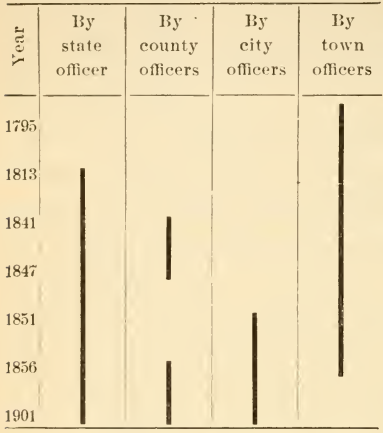
The unit of the common school in New York is still the **district school** (see page 51); which may become a **union free school** (see page 57), and in villages and cities has greatly enlarged powers (see pages 93, 107, 113).

As there are some 12,000 of these districts, the need was soon recognized of some sort of **supervision** (from Latin *super*, over, and *videre*, to

[1] For further particulars see Bardeen's School Law, p. 43.

see). The history of school supervision in New York is outlined in the adjoining chart. The original school act of 1795 provided for **town commissioners** of schools, who were to examine and license teachers and advise with trustees as to hiring them. The law of 1812 provided also for **inspectors** who were associated with the commissioners in examining teachers. In 1843 in place of commissioners and inspectors **town superintendents** were created, with the same powers. In 1856 this office was abolished, and there has since been no town supervision.

School Supervision in New York
(From an Address of Hon. Andrew S. Draper)



The act of 1841 provided for **deputy superintendents** for each **county,** with 2 in counties of more than 200 teachers, who could also examine and license teachers, their licenses being valid over all the towns within their jurisdiction. In 1843 the name was changed to **county superintendent.** The office was abolished in 1847, and

was succeeded in 1856 by that of **school commissioner** (see page 73), which still continues.

Cities (see map, page 572) and villages may employ **superintendents** (see page 108), who do not teach, but supervise the teaching, and under direction of the board have general management of the schools. This office was first created in 1851, and later was recognized by the state, a special appropriation of $800 being made for each in cities and villages of not less than 5,000 inhabitants (see map, page 571). Cities are usually outside of commissioner districts, but villages are usually under jurisdiction of the school commissioner.

It was manifest that supervision should extend farther, and unite the public schools of the state under a uniform system. So in 1812 the office of state **superintendent of schools** was created, and Gideon Hawley was the first to fill it. In 1821 he was supplanted by political intrigue, and the legislature abolished the office, transferring its duties to the secretary of state. In 1854 the office of state **superintendent of public instruction** was created, and has since been continued.

He is elected by joint ballot (see page 201) for 3 years, the term of office beginning April 7, 1901, and each third year thereafter. His salary is $5,000; and he appoints 2 deputies at $4,500 and $4,000. He gathers information from the

reports of commissioners and superintendents as a basis for his annual report to the legislature; recommends needed legislation; and advises and directs as to the management of the public schools. He has charge of the normal schools, Indian schools, and schools for defectives (see page 315); and is ex-officio a regent of the University (see page 319), and a trustee of Cornell university (see page 323), and the Syracuse asylum for the feeble-minded. He has charge of the licensing of teachers (see page 55), the normal schools and training classes (see page 313), and the school libraries.

His greatest power is judicial. In questions of school law he has coördinate jurisdiction with the supreme court. Parties aggrieved have the option of appealing to the courts or to the state superintendent. If they take the latter course, the superintendent's decision is final, and not subject to review in any court.

He has charge of the apportionment on Jan. 20 each year of the public school money, or **education fund,**[1] which is made up principally from 3 sources.

The **common school fund,** established in 1805, came from the sale of half a million acres of state lands, and is increased by $25,000 each year

[1] 413:1897.

from the United States deposit fund. Its amount in 1901 was about $4\frac{1}{2}$ millions.

From this fund $170,000 is appropriated each year for the support of common schools[1] and $7,000 for Indian schools.

The **United States deposit fund** has already been described (see page 74).

The constitution provides (258) that these two funds shall be kept inviolate.[2]

From this fund $25,000 is appropriated each year to the increase of the common school fund (258), $75,000 to the support of common schools, and $34,000 to the academic fund (see page 321).

The **free school fund** is the term applied to the annual appropriation for common schools by the legislature, which began in 1851 at $800,000, and in 1890 was increased from $3\frac{1}{4}$ to $3\frac{1}{2}$ millions. With the addition of $170,000 from the common school fund and $75,000 from the United States deposit fund, this gives a total of about 4 millions.

After setting apart the amounts for salaries of school commissioners and superintendents and for Indian schools, and $6,000 for contingent expenses, with some comparatively small sums for specific appropriations, there is first granted a **teacher's quota** of $100 to each district for every

[1] 556:1894.

[2] For more detailed history of these funds, see The School Bulletin, June, 1886 (xii.110).

qualified teacher employed for 32 weeks. The remainder is then divided equally among the counties of the state according to population, excluding Indians.

The school commissioners (see page 74) apportion the amount among the districts in proportion to the aggregate days of attendance, send to the county treasurer and to the state superintendent duplicate certificates showing the amounts apportioned to each district, and certify the same to the supervisor of each town. The moneys so apportioned are payable on April 1 to the county treasurers (see page 69), who immediately pay over to each supervisor (see page 34) the money apportioned to his town. The supervisor pays out the money only on written orders of trustees; but where the district has a treasurer (see page 57) or the collector has given bonds, the supervisor pays the district money over to him.

The school year must be not less than 32 weeks, including the week of the teacher's attendance at institute, and the following legal holidays: Jan. 1, Feb. 12, Feb. 22, May 30, July 4, the 1st Monday in September, the 1st Tuesday after the 1st Monday in November, the last Thursday in November, and Dec. 25. The 1st Friday after the 1st Monday in May is observed as Arbor day.

It is a proud distinction of the New York edu-

cational system that from the beginning it has required that the persons who examined teachers for licenses should not be those who employed them, thus establishing a double judgment as to the teacher's fitness. New York has also been most liberal in its provision for the **training of teachers.**

The system of **training classes** was established in 1834 by the regents (see page 318), and was the first provision for the training of teachers made in the United States. In 1889 they were transferred to the department of public instruction. A minimum grant of $500 is given to each class, with a proportionate share for attendance of all pupils in excess of the minimum number of 10.[1] There are also **training schools** in cities, mostly with courses of 2 years.

A **teachers' institute** is held once every year in every commissioner district; it lasts a week, and attendance of teachers is not only free, but compulsory. The first institute was held in 1843, and in 1847 institutes came under state control, $60 being given as aid to each county. This amount was increased in 1857 to $120, and in 1860 was made $8,000 for the state. In 1899 it was $40,000 for the state. In 1862 local authorities were allowed to pay teachers regular salary during their attendance at institutes. Since

[1] For requirements, see Bardeen's School Law, page 78.

1885 this payment and the attendance of teachers have been compulsory, while schools in the commissioner district were compelled to close during institute week, except in cities. In 1890 the privilege of not closing was extended to villages of 5,000 inhabitants. City institutes were begun in 1896. A corps of institute instructors was organized in 1881.

Summer schools similar in plan but extending over three weeks were established in 1896. They are held during the summer months. Attendance is free, but teachers do not receive salaries for the time in attendance.

Besides its **normal schools** (see map, page 577), the first of which was established in 1844, and for which its appropriations have always been liberal, it has established **pedagogic departments** in many of the leading colleges, and grants special certificates to those who complete the course.

Of course education reaches beyond what are called schools. Public libraries, museums, art galleries, parks, and statues promote intelligence and refine the taste. Taxation for these purposes is a public benefit.

It is not easy to draw the line between educational and charitable or penal institutions. While the latter are not public schools, they supplement their work. The theory of state education

is that every child shall have an equal opportunity for education. Hence orphans must be provided for; and there must be the special schools required for teaching the blind, the deaf, the feeble-minded, and these schools for defectives are all under charge of the state superintendent (see page 309).

The insane, too, are now so kindly and wisely treated that their unhappiness is alleviated, and not seldom they are restored to reason. In 1896 a new law was passed putting the charge of insane asylums in the hands of the commission in lunacy (see page 208), under conditions that ensure intelligent supervision. A complete record of patients is kept. To guard against the incarceration of persons not really insane, commitment to an asylum may be made only upon order of a judge of a court of record upon a certificate of lunacy made by 2 qualified medical examiners in lunacy; from which commitment appeal may be made to a justice of the supreme court, and a patient may always be released by habeas corpus (see page 138). Where the patient has relatives able or friends willing to pay his expenses in the asylum there is a charge not to exceed $10 a week; otherwise the charges are paid by the state. There is a special hospital for insane criminals.

Even sane criminals are not looked upon as

hopeless. The Elmira reformatory has restored to useful citizenship many boys who in mere confinement would have been confirmed in crime, and similar institutions have been established (see map, page 564). Prisoners may receive indeterminate sentences, the periods depending on good behavior; and those in the state prisons or in the Eastern New York reformatory under sentence for felony with maximum penalty of 5 years or less and not before convicted of crime may be released upon **parole,** and after a period of good behavior even discharged by the commission of prisons (see page 204), which for this purpose becomes a **parole board.**[1] On discharge from prison both state and national laws require that each prisoner who has served not less than 6 months be furnished a plain suit of clothes and $5 in money.[2]

The magnitude of the charitable and reformatory work of the state is seldom realized. The state appropriation in 1900 for insane asylums was 5½ millions, while the entire state appropriation for schools was a little over 4 millions.

The latter amount was however increased by local assessment to 34½ millions, a noble amount, in which New York naturally leads the nation. But she is at the head in more than in expenditure. In her systems of supervision, examination

[1] 260:1901. [2] 471:1879; 18 Stat. L. 479.

of teachers, and training of teachers, New York represents on the whole the best that has so far been developed; while in her system of encouragement of higher education, to be treated in the next chapter, she has stood until within recent years absolutely alone.

CHAPTER XXXI

ACADEMIES AND COLLEGES

While it is generally admitted that the state should provide common schools, it is sometimes questioned whether it should furnish secondary education. The conviction prevails, however, that high schools not only "promote for the general welfare" (1), but have such a tendency to prolong the attendance in the lower grades even of pupils who never reach the high school, that by a sort of capillary attraction they tend to keep the common schools full and thus to make the expenditure for the lower grades more effective.

In its encouragement of secondary instruction by special appropriations New York was the pioneer and is still far in advance of all other states. The **regents** of the University of the State of New York were created in 1784 to take charge of Columbia college. In 1787 they were relieved of that duty, but were authorized to incorporate academies and colleges and to confer degrees. Of their services to common schools we have spoken (see page 305). In 1813 the present method of election by joint ballot (see

page 201) was established, the term being for life, without salary. In 1894 the board of regents was made permanent by incorporation into the constitution (257). The number cannot be made less than 9. There are now 19 elected regents besides 4 ex-officio (see page 210). For officers see page 579.

In 1784 the unappropriated lands of the state were laid out in townships 6 miles square, and in each a lot of 300 acres was reserved for the minister of the gospel and one of 690 acres for schools. In 1786 there was reserved in each township a **gospel and school lot,** which has formed the basis for certain local school funds; and another "for promoting literature". These last lots with other lands appropriated by the legislature, were sold and the proceeds, with those of certain lotteries, were converted into a **literature fund** (**158**), which was placed under control of the regents. In 1827, the legislature added $150,000 on condition that the income be distributed among the incorporated academies in proportion to the number of pupils instructed in classical or higher English studies. The income has since been about $12,000; and to this has been added since 1838 a further sum of $28,000 from income of the United States deposit fund (see page 74). Still further additions were made by annual grant of the legislature, so that the

amount granted for each pupil was sometimes $20 a year.[1]

Since the amount received by each school was proportionate to the number taking advanced studies, there was temptation to put into such studies pupils who were not prepared for them.

Accordingly in 1865 a system of **regents examinations** was instituted, the regents sending out questions in arithmetic, geography, grammar, and spelling, the answers being sent to the regents office for marking, and pupils not being recognized as pursuing advanced studies unless they had passed one of these examinations and received from the regents a **preliminary certificate.** This at once reduced by more than ½ the number of pupils claimed to be pursuing advanced studies, and compelled academies to give thorough instruction in elementary branches.

This system of examinations, originally intended only as a check upon fraud, became so useful and valuable that it has been extended to all the subjects of the curriculum, and even to professional branches, medical, dental, veterinary, business, and library. The volume of questions for 1900–1901 contains 508 pages. Regents examinations are required of all candidates for admission to the bar and for medical and other degrees.

[1] See Bardeen's Roderick Hume, page 38.

The **academic fund** is now made up of the $12,000 from the literature fund, $34,000 from the United States deposit fund, and $60,000 from the general fund,[1] with a further annual appropriation of $244,000, so that each academic school shall receive (1) $100; (2) a grant for books and apparatus equal to that raised locally, but not exceeding $250; (3) a proportionate share of the balance on the basis of attendance of academic students.[2]

Since 1834 appropriations have been made to academies for books and apparatus, and the regents now lend books and pictures for school use.

In 1835 the regents began to publish annual reports, containing fuller educational statistics than had ever before been collected. Besides these reports, which are now published annually in several volumes, the regents have issued a great number of publications, both directly of their own work, and as in charge of the work of the state library and museum, the state geologist, palaeontologist, botanist, etymologist, etc.

The supervision of the regents was originally limited to colleges and **academies**, the latter incorporated private schools for instruction in higher branches of education.[3] In 1822 the trustees of the academy at Goshen were authorized to exercise the powers of trustees of the

[1] 378:1892. [2] 498:1901. [3] 378:1892.

village school district, and in 1853 an act was passed for the organization of **union free schools**[1] (see page 57) with academic departments, which when admitted under visitation of the regents were to have all the privileges of academies. These schools soon began to displace the academies, most of which have been forced to unite with the union schools in their villages. The advantages of being a "regents school" are so great that most of the larger union schools have come under their visitation. The conditions of admission are as follows:

1. Schools are named according to the number of years in the academic course, those giving 4 years being **high schools,** 3 years **senior schools,** 2 years **middle schools,** and 1 year **junior schools.**

2. Such schools are admitted on proof that they possess an approved library to the value of $400, $300, and $200, respectively, and such apparatus as is required for teaching the subjects.[2]

The state superintendent, through a provision in the law for the employment of teachers in cities and villages (see page 108) making one of the qualifications graduation from a high school approved by him, has established a course of

[1] 433:1853.

[2] For details of procedure, see Bardeen's School Law, pp. 59–61.

study which must be adopted by schools wishing this approval.[1]

Some states make the university a part of the public school system. This New York has never done; but its **college land script fund,** from the sale of western lands granted in 1862 by the United States for support of state agriculture colleges, is held by the state for the benefit of Cornell university; 5% each year being paid to the university.[2] In return the university gives free scholarships to 600 students each year, who are selected, one from each assembly district (see page 227), by competitive examinations held on the 1st Saturday in June under direction of the state superintendent. Candidates must be at least 16 years, and must have attended the public schools or academies of the state for 6 months of the preceding year. Cornell also receives $\frac{9}{10}$ of the money received under the national law of 1887 for establishing agricultural experiment stations in connection with the colleges, the other $\frac{1}{10}$ going to the station at Geneva.[3] It is also in charge of the state school of forestry.

The constitution provides (259) that no public money shall be used, except for examination and inspection, in aid of any school under the control or direction of any religious denomination, in which any denominational doctrine is taught.

[1] See Bardeen's School Law, page 60. [2] 413:1897. [3] 675:1894.

CHAPTER XXXII

THE CONFEDERATION

We have spoken (page 118) of New York as a sovereign state, with independent authority of its own, not delegated or subject to alteration by some authority above. But a single state, standing alone, would not have power to protect itself and its rights against encroachments. Hence it has formed a union with other states, and delegated certain of its powers to a national government.

When independence was declared (see page 591), the principle had become a familiar one, since some of the colonies had from time to time found it advisable to form unions for certain purposes.

The **United Colonies of New England** was the name given to a union in 1643 of the 4 colonies of Massachusetts, Plymouth, Connecticut, and New Haven, formed on account of the disturbed condition of affairs in the mother country, and the troublesome character of their neighbors.

It was a league of friendship, for offence and for defence, for mutual advice and help in preserving their religious privileges, and for mutual safety and welfare. No new members could be

admitted to the union, nor could any 2 of the 4 unite without consent of the other 2. Within its own limits each colony was independent.

The 4 colonies had at this time 24,000 men—Massachusetts 15,000; Connecticut and Plymouth each 3,000; New Haven 2,500.

The confederacy was virtually dissolved in 1665, when Connecticut obtained a charter giving her jurisdiction over New Haven; but it was renewed by the same colonies, which now numbered only 3, Connecticut having absorbed New Haven, to manage King Philip's war; and it perished in 1684, when James II overthrew the popular governments of New England.

The **Albany convention** (1754) was held by delegates from 7 of the colonies and adopted a plan of union for the protection of the American colonies against France. It was, however, rejected both by the colonies because it gave too much power to the English government, and by the English government because it gave too much power to the colonies.

The **stamp-act congress** (1765) met in New York to consider the state of colonial affairs, and adopted a **declaration of rights.** Soon after the stamp-act was repealed, and the effect of the congress on the colonies was to prepare the way for closer union.

These experiences had taught the colonies the

advantages of union, and prepared them to unite in resisting the demands of Great Britain. The colonial legislatures denied all power of taxation except under laws passed by themselves; parliament by express declaration claimed that the king had full authority to make laws to bind the colonies in all cases whatsoever. Parliament forbade the importation of goods into the colonies except in British vessels, forbade the manufacture of iron and hats in the colonies, forbade the colonies to sell abroad or from one colony to another any wool or woolen goods, in 1733 put high duties upon sugar and other articles imported into the colonies from the West Indies, and forbade the exportation of such American products as sugar, tobacco, and cotton to any but English ports. Finally it passed an act levying duties upon all tea, glass, paper, etc., imported into the colonies.

The **first continental congress** (1774), in which all the colonies except Georgia were represented by delgates, took a decided step toward independence in publishing a second **declaration of rights** It was here that Patrick Henry exclaimed, "British oppression has effaced the boundaries of the several colonies. The distinctions between Virginians, Pennsylvanians, New Yorkers, and New Englanders are no more. I am not a Virginian but an American." It will

be noted that the declaration of rights says: "To those grievous acts and measures *Americans* can not submit" (see page 329).

The **second continental congress** assembled in Philadelphia in 1775, and continued in session till the close of the revolutionary war. It passed on July 4, 1776, the Declaration of independence (see page 591), in which for the first time the colonies were called the United States of America.

The Declaration was written by Thomas Jefferson, and was passed by all the delegates except those from New York. These referred it to the people, by whom it was adopted July 9. The bell in the tower of the building where the congress met, since called Independence hall and still standing, was rung long and loud in honor of the signing, and is still exhibited as the Independence bell.

The principal points of difference between the second Declaration of rights and the Declaration of independence are summarized as follows:

Declaration of rights 1774	*Declaration of independence 1776*
1. Rights to life, liberty, property.	Rights to life, liberty, and pursuit of happiness.
	The king has cut off our trade with all parts of the world.

2. Ancestors entitled to all the rights of Englishmen.

3. Descendants have the same rights.

4. Foundation of English liberty and of all free government the right of the people to participate in their legislative council; as colonies are not represented in parliament all taxes must be fixed by colonial legislatures.

5. Right to trial by jury.

6. Rights under all applicable English statutes existing at time of colonization.

7. Rights under our charters.

8. Right to assemble, discuss, and petition.

9. Standing armies

We have conjured them by the ties of our common kindred to disavow these usurpations.

He has established absolute tyranny, refusing assent to necessary laws, summoning legislatures at uncomfortable places, dissolving them and refusing to allow others to be elected, imposing taxes without our consent.

He has deprived us of it in many cases, and transported us over the seas for pretended offences.

He has taken away and altered charters.

He has kept them,

in colonies in time of peace illegal.

10. Both houses of legislature must be elected by people.

making the military superior to civil power, and quartering large bodies of troops upon us.

He has combined with others to give us a jurisdiction foreign to our constitution, giving his assent to pretended legislation.

He has discouraged immigration to the colonies and obstructed naturalization;

He has refused assent to laws for establishing a judiciary, making judges dependent on his will alone;

He has erected a multitude of new offices;

He has abdicated government here by waging war against us, and made our captive fellow-citizens bear arms against us.

To these acts Ameri- Governments derive

cans can not submit.

We therefore resolve (1) to enter into agreement not to import, consume, or export; (2) to prepare an address to the people; and (3) to prepare an address to the king.

their just power from the consent of the governed, and when a government does not secure their rights to the governed it should be abolished.

We therefore declare the united colonies to be free and independent states, absolved from all allegiance to the British crown.

The adoption of the Declaration of independence made necessary some plan of union among the states. A plan was proposed July 12, 1776, and after much debate **articles of confederation** (see page 595) were adopted by congress Nov. 15, 1777, and by the last of the states March 1, 1781. Meantime the states had been held together only by their fears. Congress had no defined powers, but the state relied upon the wisdom and the patriotism of its members and acquiesced in its acts.[1]

The articles of confederation proved wholly inadequate. Hamilton said of government under

[1] B i. 17.

these articles, "It had power to declare anything and to do nothing." The states after 6 years of union without it and 8 years under it found it was only the "shadow of a government without the substance".

CHAPTER XXXIII

THE NATIONAL CONSTITUTION

Difficulties of carrying on a central government under the articles of confederation increased until, on Feb. 21, 1787, following a report of a congress in 1786, in which only 5 states were represented, congress recommended the appointment of a convention to revise the articles of confederation so that they might be "adequate to the exigencies of government and the preservation of the union". All the states except Rhode Island sent delegates, and the convention assembled May 14, 1787.

That the confederation was not a nation was recognized in a resolution offered early in the session of the convention and carried against great opposition: "That a national government ought to be established, consisting of a supreme legislative, judiciary, and executive." The delegates, accordingly, instead of trying to amend the articles of confederation prepared a new **national constitution** (see page 118), and on Sept. 17, 1787, reported it to congress, which submitted it to the legislatures of the several states for adoption. Nine of the states, the required

number, had ratified it by June 21, 1788. Virginia followed June 26, New York July 26, 1788, North Carolina in 1789, and Rhode Island in 1790. The first congress under the new constitution met March 4, 1789, and George Washington took the oath of office as the first president on April 30, 1789.

"Thus was achieved," says Judge Story, "another and still more glorious victory in the cause of national liberty than even that which separated us from the mother country."

The constitution was modelled upon that of the state constitutions, all of which had the written form, and most of which provided for legislative, judicial, and executive departments; for two legislative houses, the members chosen in different ways; for a chief executive; for a judiciary appointed by the executive and confirmed by the upper house.[1] "It has been truly said that nearly every provision of the federal constitution that has worked well is one borrowed from or suggested by some state constitution; nearly every provision that has worked badly is one which the convention, for want of a precedent, was obliged to devise for itself."[2] "It is, therefore, so to speak, the complement and crown of the state constitutions, which must be read along with it and into it, in order

[1] B i. 27, 34. [2] B i. 32.

to make it cover the whole field of civil government, as do the constitutions of such countries as France, Belgium, Italy." [1]

"The constitution of the United States is a part of the constitution of each state, whether referred to in it or not." [2]

Bryce says (i.364): "Probably no writing except the New Testament, the Koran, the Pentateuch, and the Digest of the Emperor Justinian, has employed so much ingenuity and labor as the American constitution, in sifting, weighing, comparing, illustrating, twisting, and torturing its text." [3] "It was and remains what its authors styled it, eminently an instrument of compromises; it is perhaps the most successful instance in history of what a judicious spirit of compromise may effect." [4] "Yet, after all deductions, it ranks above every other written constitution for the intrinsic excellence of its scheme, its adaptation to the circumstances of the people, the simplicity, brevity, and precision of its language, its judicious mixture of definiteness in principle with elasticity in details." [5]

"The constitution of England is contained in hundreds of volumes of statutes and reported cases; the constitution of the United States (in-

[1] B i.29. [2] B i.368. [3] B i.25, 305; ii.17. [4] B i.22. [5] B i.25.

cluding the amendments) may be read through aloud in 23 minutes."[1]

"The rigid constitution of the United States has rendered, and renders now, inestimable services. It opposes obstacles to rash and hasty change. It secures time for deliberation. It forces the people to think seriously before they alter it or pardon a transgression of it. It makes legislatures and statesmen slow to overpass their legal powers, slow even to propose measures which the constitution seems to disapprove. It tends to render the inevitable process of modification gradual and tentative, the result of admitted and growing necessities rather than of restless impatience. It altogether prevents some changes which a temporary majority may clamor for, but which will have ceased to be demanded before the barriers interposed by the constitution have been overcome.

"It does still more than this. It forms the mind and temper of the people. It trains them to habits of legality. It strengthens their conservative instincts, their sense of the value of stability and permanence in political arrangements. It makes them feel that to comprehend their supreme instrument of government is a personal duty, incumbent on each one of them. It familiarizes them with, it attaches them by

[1] B i.363.

ties of pride and reverence to, those fundamental truths on which the constitution is based."[1]

"The contests in the convention of 1787 over the framing of the constitution, and in the country over its adoption, turned upon two points: the extent to which the several states should be recognized as independent and separate factors in the construction of the national government, and the quantity and nature of the powers which should be withdrawn from the states to be vested in that government."[2] "The salient feature of the constitution is the effort it makes to establish an equipoise between the force which would carry the planet states off into space and the force which would draw them into the sun of the national government."[3]

The happy solution of the difficulty was the formation of a government with limited delegated powers, expressly reserving to the states all powers not delegated. "So much is left to the states, that Jefferson once said the federal government was only the American department of foreign affairs;[4] yet even in Jefferson's own state it is the nation and not the state that is present to the imagination of the citizen as sovereign."[5]

The national government is vested with absolute power over certain specified subjects, and the states have equally absolute power over all

[1] B i.396. [2] B i.305. [3] B ii.17. [4] B i.412. [5] B i.394.

the rest. Bryce says (i.12): "America is a commonwealth of commonwealths, a republic of republics, a state which, while one, is nevertheless composed of other states even more essential to its existence than it is to theirs." See page 118.

It must be noted that while the state uses the official machinery of the county and the town, the United States never works through state or local officers. It executes all its orders through national officials; and, on the other hand, in most states federal officials are disqualified from holding state offices or election to the legislature (**148**).[1]

"It is a further consequence of this principle that the national government has but little to do with the states as states. Its relations are with their citizens, who are also its citizens, rather than with them as ruling commonwealths. In the following points, however, the constitution does require certain services of the states:

"It requires (**3, 8**) each state government to direct the choice of, and accredit to the seat of the national government, two senators and so many representatives as the state is entitled to send.

"It requires (**54, 95**) similarly that presidential electors be chosen, meet, and vote in the states,

[1] B i.323, 442.

and that their votes be transmitted to the national capital.

"It requires (**41, 61, 85**) each state to organize and arm its militia, which, when duly summoned for active service, are placed under the command of the service (see page 194).

"It requires each state to maintain a republican form of government" (**78**).[1]

The United States **is**. In the constitution all the references to the United States show that the makers commonly used the word as plural (**50, 67, 70**); and many writers, like Bryce,[2] follow that usage. Of recent years, however, in most of the presidents' messages, the decisions of the supreme court, and the treaties with foreign countries, the word is followed by a singular verb. It is to-day the best usage to say the United States *is* a nation (see page 182).

The **source of authority** of the constitution is **the people.** The articles of confederation were "between the states", and were ratified by the legislatures (see page 350). The constitution begins: "We, the people of the United States * * * do ordain and establish this constitution," and was ratified by conventions directly elected by the people.[3]

The point is sometimes made that the states were never sovereign states—that they were

[1] B. 312. [2] ii.301. [3] Bancroft, ii.208.

colonies till July 4, 1776, and then became united into a nation. In this view the states could not yield part of their sovereign powers to form the national constitution, because they never possessed those powers, the continental congress exercising the powers of national sovereignty till the constitution went into operation. But as has been already said (page 330), the continental congress was tacitly allowed to exercise powers it did not really possess.[1]

The **purpose** of the constitution is stated in what is called the preamble, though it is more properly the enacting clause:

"We the people of the United States,

(1) in order to form a more perfect union,

(2) establish justice,

(3) insure domestic tranquillity,

(4) provide for the common defence,

(5) promote the general welfare, and

(6) secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America (**1**)."

Amendments may be proposed either (1) by congress, or (2) by a convention called by congress at the request of $\frac{2}{3}$ of the state legislatures. They may be ratified either (3) by the legisla-

[1] Duer, page 345.

tures or (4) by conventions in $\frac{3}{4}$ of the states (**79**).

All the 19 amendments that have been proposed since the adoption have been proposed by mode (1), and the 15 that have been ratified have been ratified by mode (3). When New Jersey and Ohio sought to withdraw their ratification of the 14th amendment (**99–103**), congress by its action declared its opinion that a state cannot withdraw the ratification once given.

The only limitation upon the power of amendment is that no state without its consent shall be deprived of equal suffrage in the senate (**79**).[1]

The first 10 amendments were ratified in 1791, and comprise practically the bill of rights[2] which form a feature of all the state constitutions (see page 136). The others are mentioned topically. It will be observed that they are all restrictions upon the departments of national government, and not upon the states.

Yet Bryce feels sure the national government is overshadowing the state governments (see page 353), and that congress is becoming supreme in the national government. He says:

"Men come and go, but the assembly goes on forever; it is immortal, because while the members change, the policy, the passion for extending its authority, the tenacity in clinging to

[1] B i.356. [2] B i.24.

what has once been gained, remain persistent. * * * * * * Thus congress, though it is no more respected or loved by the people now than it was seventy years ago, though it has developed no higher capacity for promoting the best interests of the state, has succeeded in occupying nearly all the ground which the constitution left debatable between the president and itself; and would, did it possess a better internal organization, be even more plainly than it now is the supreme power in the government."[1]

AMENDMENTS TO THE NATIONAL CONSTITUTION

year of adoption	*subjects*	*amendments*
1791,	personal rights, religious liberty	I (**84**), 145
1791,	free speech	I (**84**), 144
1791,	to bear arms	II (**85**), 194
1791,	private houses	III (**86**), 151
1791,	search warrants	IV (**87**), 138
1791,	criminal proceedings	V, VI, VIII (**89, 91**), 141
1791,	trial by jury	VII (**90**), 141
1791,	rights of the people	IX (**92**), 338, 352
1791,	powers of the state	X, [**93**), 352
1798,	power of national judiciary	XI (**94**), 275
1804,	election of president	XII (**95**), 362
1865, 68, 70,	slavery and civil rights,	XIII, XIV, XV (**98-105**), 495
1868,	apportionment	XIV (**100**), 445
1868,	political disabilities	XIV (**101**), 547
1868,	debts of the civil war.	XIV (**102**), 413

[1] B ii, 223.

CHAPTER XXXIV

RELATION OF THE NATION TO THE STATES

What are the powers which the states delegated to the nation?

Exclusive national powers are granted to:[1]

make the supreme law of the land (**81, 34**; see page 286);

declare war (**36**; see page 398);

require oath to support the national constitution from all members of state legislatures and state executive and judicial officers (**82**; page 395).

make treaties (**51**; see page 474);

regulate commerce (**28**; see page 418);

establish rules of naturalization (**29**; see page 155);

coin money (**51**), and punish counterfeiting (**31**; see page 407);

fix the standards of weights and measures (**30**; see page 406);

emit bills of credit (**51**; see page 413);

make bankruptcy laws (**29**; see page 524);

make anything but gold and silver legal tender (**51**; see page 408);

grant patents and copyrights (**33**; see pages 423, 424);

[1] B i.308.

establish post-offices (**32** ; see page 401);

establish post-roads (**32** ; see page 403);

exact duties, imposts, or tonnage (**52, 26** ; see pages 296, 348);

keep troops or ships of war in time of peace (**37, 38, 52** ; see page 397);

grant letters of marque and reprisal (**51** ; see page 399);

declare and make rules for war (**52** ; see page 398);

have jurisdiction over the District of Columbia and all lands occupied for national purposes (**42**; see page 360).

Every power alleged to be vested in the national government must be affirmitavely shown to have been granted; but when once the grant of a power by the people to the national government has been established, the power will be construed broadly (see page 441).[1]

Exclusive state powers were reserved to:

manage elections (**15** ; see page 164);

manage the militia (**41**), as to appointment of officers and training. The discipline however must be that established by congress (**61**), that when placed side by side in a national army they may be uniformly trained (see page 196).

The courts have uniformly ruled that the

[1] B i.368, 369.

states have powers not by favor of congress but by the terms of the constitution.

Co-ordinate powers are granted to the nation with the states to:

levy taxes (**26** ; (see page 292);

borrow money (**27** ; see page 302).

Forbidden powers to both state and nation are to:

grant titles of nobility (**50, 51**);

Hamilton says:[1] "This may truly be denominated the corner-stone of republican government; for so long as titles of nobility are excluded there can never be serious danger that the government will be any other than that of the people."

take private property without just compensation (**88** ; see page 151);

pass bills of attainder (**46, 51** ; see page 140);

pass ex post facto laws (**46, 51** ; see page 139).

Forbidden national powers are to:

abridge freedom of speech (**84**; see page 144);

freedom of the press (**84**; see page 45);

right of assembly and petition (see page 145);

make unreasonable searches or seizures (**87**; see page 137);

require religious test for office (**82**; see page 145);

make laws establishing religion, or prohibiting free exercise thereof (**84**; see page 145);

[1] Federalist, No. 84.

hold for criminal trial except on indictment (88; see page 82);

or twice for the same offence (88; see page 142);

imprison a man without informing him of the charge (89; see page 137);

compel a witness to testify against himself (88; compare page 142);

deprive a person of life and liberty except by process of law (88; see page 137);

delay trial in criminal prosecutions (89; see page 268);

fail to confront the prisoner with the opposing witnesses (89; see page 142);

fail to provide the prisoner with witnesses and counsel (89; see page 141);

do away with trial by jury (69, 90; see page 141);

require excessive bail or fines (91; see page 141);

inflict cruel or unusual punishments (91; see page 143);

permit slavery or involuntary servitude (98; see page 355);

draw money from the treasury except through legal appropriations (49; compare page 234);

The congressional acts making appropriations for the year ending June 30, 1901, fill more than 230 pages.

suspend the writ of habeas corpus except when required in cases of rebellion or invasion (**45**; see page 139);

appropriate money to support armies for a longer term than 2 years (**37**), thus giving the people opportunity to elect a new house (page 445);

quarter soldiers in private houses (**86**; see page 151);

punish treason by corruption of blood, or forfeiture except during the life of the traitor (**71**; see page 140);

lay any captation or other direct tax except in proportion to the census (**47**; see page 298);

permit its officers except by consent of congress to receive from any foreign state any present, emolument, office, or title (**50**; see p. 395);

place duties upon exports from a state (**48**; see page 296);

There was strong opposition to this in the convention. Great Britian in 1901 placed an export tax on coal.

give preference to the ports of any one state over those of another (**48**; see page 418);

require vessels in going from one state to another to enter, clear, or pay duties (**48**; see p. 419).

Under Great Britain an American ship for a European port must clear from some British port. Now a vessel can go from any American to any English port.

Forbidden state powers are to:

absolutely forbidden

establish any other than a republican form of government (**78**; see page 481);

abridge the privileges or immunities of citizens (**99**; see page 136);

deny or abridge the right to vote on account of color (**104**; see page 157);

deprive any person of life, liberty, or property without due process of law (**99**; see page 141);

pass laws impairing obligation of contract (**51**; see page 523);

deny any person equal protection of the laws (**99**; see page 137);

emit bills of credit (**51**; see page 514).

These are evidences of indebtedness that may be used as money.

A state may borrow money and issue bonds; but when Missouri issued loan certificates which were made receivable for taxes and debts the supreme court decided that they were bills of credit and unconstitutional. During the revolutionary war bills of credit to the amount of 350 millions of dollars were issued by the states, which depreciated till they became worthless.

forbidden except with consent of congress

enter into treaty, alliance, or federation (**51**, **52**; see page 474);

lay imposts or duties except as necessary for executing its inspection laws (**52**);

The exercise of this power by the states was one of the chief causes of the overthrow of the articles of confederation. A state may make charges for the inspection of flour, milk, butter, etc., to ascertain their quality and quantity, but only for this purpose (see page 418).

lay any duty of tonnage, a tax on ships in proportion to their cubical contents (**52**; see page 343);

keep troops or ships of war in time of peace (**52**; see page 397);

engage in war unless actually invaded (**52**; see page 469).

"Note that this list contains no prohibition to a state to do any of the following things: establish a particular form of religion; endow a particular form of religion, or educational or charitable establishments connected therewith; abolish trial by jury in criminal or civil cases; suppress the freedom of speaking, writing, and meeting (provided that this be done equally as between different classes of citizens, and provided also that it be not done to such an extent as to amount to a deprivation of liberty without due process of law); limit the electoral franchise to any extent; extend the electoral franchise to women, minors, aliens."[1]

[1] B i.310.

Guarantees to each state:

2 senators (79; see page 453);

at least 1 representative (5; see page 445);

a republican form of government (78; see page 481);

religious freedom (82; see page 145).

the right to bear arms (84; see page 194);

protection against invasion (78; see page 197);

protection against domestic violence (78) on application of the legislature, or of the governor if the legislature can not be convened (see page 198).

In the railway strike of 1894 rioting occurred in railway yards in Chicago. Though Gov. Altgeld did not apply for national interference and protested against it, President Cleveland ordered Gen. Miles to use his troops to preserve order, on the ground that it was his duty to protect the national mails and interstate commerce (see pages 198, 404).[1]

to citizens in each state all the privileges and immunities of citizens in the several states (73; see page 493);

extradition of criminals (74; see page 554);

full faith in each state to the acts, records, and judicial proceedings of every other state (72; see page 269);

[1] i.323, 548.

that no preference shall be given by regulation to the ports of one state over those of another (48; see page 418);

that no new state shall be formed within its jurisdiction (76; see page 358).

In 1861 the western counties of the state of Virginia met in convention, deposed the state officers who had led the state to secede, and formed a constitution for West Virginia, which was admitted in 1863. Admission to the confederation was refused in 1777 to Vermont, since both New York and New Hampshire claimed it to be within their jurisdiction.

Articles of confederation	*National constitution*
made a league of friendship;	made a nation;
adopted by legislatures;	adopted by the people;
no executive department;	president and cabinet;
no national courts;	supreme and inferior courts;
1 house of congress;	2 houses of congress;
vote in congress by states;	vote by individuals;
salary of members paid by states;	salary paid by nation;
could deal only with states;	deals directly with individuals;

could not enforce laws if states objected;	can enforce laws with entire army and navy;
could not regulate commerce;	ample power to do this;
could collect taxes only by calling on states;	collects taxes by its own authority;
could not settle disputes between states;	ample power to settle disputes;
could not enforce uniformity of law;	ample power to do this;
could not protect state from invasion;	ample power to do this;
could not use force against a state in rebellion;	can use entire power of government to put down rebellion;
could coin money, but had no power to buy bullion;	has ample power to buy bullion;
had no real power at home or abroad;	can enforce its laws at home and protect its citizens abroad;
was a government in name only, defied at home and despised abroad.	is a government loved and obeyed at home, and respected and honored abroad.

"A state is, within its proper sphere, just as legally supreme, just as well entitled to give

effect to its own will, as is the national government within its sphere; and for the same reason. All authority flows from the people. The people have given part of their supreme authority to the central, part to the state governments. Both hold by the same title, and therefore the national government, although superior wherever there is a concurrence of powers, has no more right to trespass on the domain of a state than a state has upon the domain of federal action."[1] See page 118, and compare page 192.

To prevent any misconception the 10th amendment (93) declares that the powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

In the articles of confederation this read "not *expressly* delegated" (see page 595), but in the convention it was objected to this word that it was impossible to confine a government to the exercise of express powers; the constitution could not specify every detail, and much must be implied. There have even been times, as during the civil war, when the safety of the country required that the written constitution should be evaded or over-ridden; when men said they would break the constitution in order to save it.[2]

It is Bryce's opinion that the result of the

[1] B i.314. [2] B i.388.

compromises thus embodied in the constitution is the gradual lessening of the influence of the state. "Although the states have grown enormously in wealth and population, they have declined relatively to the central government. The excellence of state laws and the merits of a state administration make less difference to the inhabitants than formerly, because the hand of the national government is more frequently felt. The questions which the state deals with, largely as they influence the welfare of the citizens, do not touch his imagination like those which congress handles, because the latter determine the relations of the republic to the rest of the world, and affect all the area that lies between the two oceans. The state set out as an isolated and self-sufficing commonwealth. It is now merely a part of a far grander whole, which seems to be slowly absorbing its functions and stunting its growth, as the great tree stunts the shrubs over which its spreading boughs have begun to cast their shade. * * *

"The truth is that the state has shrivelled up. It retains its old legal powers over the citizens, its old legal rights as against the central government. But it does not interest its citizens as it once did. And as the central government overshadows it in one direction, so the great cities have encroached upon it in another. The popu-

lation of a single city is sometimes a fourth or a fifth part of the whole population of the state; and as city questions interest this population more than state questions do, city officials have begun to rival or even to dwarf state officials."[1]

[1] B i.537, 586, 344.

CHAPTER XXXV

TERRITORIES AND NEW STATES

Not all the territory that belonged to the nation they formed was included in the original 13 states, and even before the constitution was adopted provision was made for the government of the region northwest of the Ohio river by the **ordinance of 1787** (see page 604). Of this Daniel Webster declared[1] that he doubted whether any one law of any lawgiver, ancient or modern, had produced effects of more distinct, marked, and lasting character; and Senator Hoar[2] that it belongs with the Declaration of independence and the national constitution as one of the three title-deeds of American liberty.

It will be noted that it includes some of the most important provisions of the bill of rights (see pages 608, 610), being the first American document to recognize religious freedom (see page 608), and to provide for the security of property (see page 604); it anticipated the constitution more than three-quarters of a century in forbidding slavery (see page 610); and it made the first declaration after the revolution that education was the duty of government (see page 609).

[1] Works, iii.263. [2] Oration at Marietta centennial,

The national constitution provided (77) that congress should have power to make the needful rules and regulations concerning all this territory, as to which there were at that time conflicting claims, and whatever might be afterwards acquired. Florida was bought from Spain, the Louisiana purchase from Napoleon, Alaska from Russia, Texas and California were ceded by Mexican treaty, the entire territory thus acquired measuring nearly 2 billion acres, and costing 322 millions.

Hawaii was annexed and Porto Rico and the Philippines were secured by Spanish treaty. These last acquisitions, with a protectorate over Cuba, have led to new problems, many of which are still unsettled, as shown by the closely divided decision of the supreme court in 1901 as to duties in Porto Rico. But the national territories on the North American continent are still governed on the general principles established by the ordinance of 1787.

The government has always encouraged development by allowing settlers who occupy public lands to purchase at a reduced price, which is called **pre-emption** (from Latin *pre* and *emere*, to buy). The **homestead law** gives outright farms of 160 acres to actual settlers, who are citizens or have filed intention of becoming so (see page 156), 21 years of age, who for 5 years have no other

home, and who cultivate the land and make improvements that show good faith. The farm may be selected at will from unappropriated and unimproved lands, and the right dates from when he begins to make improvements. He must make entry at a United States land office (see page 422) within 3 months, proving that he is a citizen and age, and paying a small fee, and he receives a of receipt describing the land, and conferring **inceptive right.** He must begin his residence there within 6 months, and continue residence and cultivation 5 years (if a soldier of the civil war, 1 year), after which he receives, his **patent,** and the land is fully his. If he wishes to remain less than 5 years, he may pay for the land at $1.25 an acre, or if it is within the limits of a railway land grant, at $2.50 an acre.

The **timber culture act** provides that public lands naturally devoid of by timber may be acquired by planting trees thereon and keeping the same in a healthy growing condition for 8 years. The applicant must be as before an adult citizen (see page 155), the head of a family, and must not enter claim for more than 160 acres.

In 1854 **swamp land grants** were established under similar conditions, allowing the settler not more than 640 acres at $1.00 an acre, of land that he has irrigated for 3 years, and which

would not without irrigation produce some agricultural crop.

The most important cessions of land have been by **railroad grants,** which have covered more than 37 million acres.

To develop **mining tracts,** an adult citizen may claim and hold not more than 1,500 feet along the course of any mineral vein. Labor or improvements to the value of $100 must be expended every year thereafter, or the claim becomes subject to reclamation. Enormous fortunes have come from lands secured in this way.

By these provisions the government has populated its vast territory with remarkable rapidity, and developed what is in itself a great country.

The people of a **territory** (from Latin *terra*, the earth), have no powers of government except those granted by congress. A territory has not, like the states, a constitution, but is governed entirely by United States statutes.[1] The inhabitants have passive citizenship; they are protected by the government. But they are not actively citizens,[2] they do not govern themselves, they have no voice in the election of governor or congress or president. When congress chooses to establish a territorial government the people elect a territorial legislature, and a delegate to speak for them in congress, though with-

[1] B i.553. [2] i.555.

out vote. But the governor and the judges are still appointed by the president, and the entire territorial authority gets its sanction not from the people but from congress.

In a sense this gives taxation without representation; but the territory is looked upon as a state in process of formation, to come into its full rights when it is large enough and mature enough for them.[1]

The territory can come into the union as a state only by consent of congress (**76**). Upon petition congress may pass an enabling act authorizing the adoption of a constitution. If such a constitution is adopted and approved by congress, the state is **admitted** into the union.[2]

The table on page 561 gives the date of admission of each state, with facts as to origin, population, etc. There can be no doubt that some states have been allowed admission before they were entitled to it, through the wish of the dominant party in congress to secure additional senators likely to be of their party. Nevada, for instance, has a population of only 42,335, and yet it has the same representation in the national senate as New York with its 7 millions. Of its 71 million acres only ½% is under cultivation, and 95% is still owned by the national government, because not deemed by settlers worth

[1] B i.554, 556. [2] B i.556.

taking up. Of the less than 4 million acres occupied more than a million are owned by a dozen men. Hence it has been charged that the senatorships were matters of bargain and sale, the market-price ranging from $80,000 to $100,000.

Can a state that once entered the union withdraw? That was what South Carolina thought in 1832 (see page 297); but Andrew Jackson thought differently and his view prevailed. The southern states fought the civil war to prove that they had the right to secede, and the verdict was against them. They ceased to become states, and had to be readmitted.

The **District of Columbia** is unique in that the people have no elective franchise, and do not look forward to it.

Congress has exclusive control (42); and in 1878 established a board of 3 commissioners appointed for 3 years by the president, to have general charge of municipal affairs, appointing police, firemen, teachers, etc. They present an annual financial report to the secretary of the treasury. If approved by him and by congress, half the money is raised by tax upon the district, and the other half is appropriated from the general treasury.

The supreme court of the district consists of a chief justice and 5 associates, appointed for life by the president, with confirmation by the

senate (see page 282). The laws are made directly by congress.

On account of the insult heaped upon it in Philadelphia, the continental congress was obliged to adjourn to Princeton. So it was determined to place the seat of government in territory under exclusive control of congress.

Congress has control over all national property, such as forts; and may fix the place of trial for crimes not committed in any state (69; see page 553).

The decisions of the supreme court in 1901 as to Porto Rico and the Philippines establish that the constitution does not follow the flag; that is to say, that the inhabitants of countries which come under control of the United States do not become entitled to the privileges of American citizens except by specific enactment of congress.

They also establish that there is a distinct difference between territory "a part of" and territory "belonging to" the United States. Congress can legislate for all outlying territory as it sees fit. It can impose duties on articles imported from such territory to the United States, or on articles imported into such territory from the United States, without regard for the provision that all duties shall be uniform throughout the United States (26; see page 296).

CHAPTER XXXVI

THE PRESIDENT

All the other officers provided for by the national constitution were already familiar institutions, that had been evolved from long struggles for liberty. The presidency was a creation. Bryce says (i.62, 69):

"In no European country is there any personage to whom the president can be said to correspond. It we look at parliamentary countries like England, Italy, Belgium, he resembles neither the sovereign nor the prime minister, for the former is not a party chief at all, and the latter is palpably and confessedly nothing else. The president enjoys more authority, if less dignity, than a European king. He has powers for the moment narrower than a European prime minister, but these powers are more secure, for they do not depend on the pleasure of a parliamentary majority, but run on to the end of his term. One naturally compares him with the French president, but the latter has a prime minister and cabinet, dependent on the chamber, at once to relieve and to eclipse him; in America the president's cabinet is a part of himself and has noth-

ing to do with congress. The president of the Swiss confederation is merely the chairman for a year of the administrative federal council (Bundesrath), and can hardly be called the executive chief of the nation."

The first question that came before the convention was whether the executive power should be vested in a single person or in a board or committee. It was the wise decision,[1] that to secure promptness, and energy and responsibility it was better to put **one person** at the head (**53**). The confederation had put at the head a committee of 13. Switzerland now has an executive committee of 7.

Then came the question as to his **term of office.** It must be long enough to give him a chance to formulate a policy and carry it out, but not so long as to make him feel independent of the people. It was finally fixed at 4 years (**53**), half way between the 2 years of the house of representatives and the 6 years of the senate.

There was also the question whether he should be eligible for re-election, but no restriction on that point was made. Of the 13 presidents renominated 8 were re-elected, and a 9th, Cleveland, was elected again after an interval.

Finally came the question of the **manner of election.** Nothing cost the framers of the con-

[1] Federalist, No. 72.

stitution more time and trouble, nothing seemed to them better worked out, and nothing has more completely failed to realize their expectations. They feared the haste and excitement of a popular vote; they feared to entrust to congress the election of the officer who was to hold congress in check.[1]

The **electoral college** was expected to solve the difficulty. It was intermediate between the voters and the election. The voters were to choose men to whom they were willing to entrust the election of president, and these men were to elect him (**54**). But the expedient has proved only a piece of unnecessary machinery. In no single instance has a presidential elector voted for any other candidate than those he was expected to vote for when elected. The people might as well have voted for president direct. For an elector to use independent judgment would be considered a fraud on his constituents.[2]

There is however one possibility, the death between November and January of one or more of the candidates. This happened in the case of Horace Greeley. He had not received a majority, and his electors divided the votes among 4 candidates. There is also a danger. A minority of voters may elect a president. A few of the smaller states added to New York, and Ohio would give

[1] B i.291. [2] Story, §1,463.

a majority in the electoral college, which makes it worth a good deal of effort to carry nearly balanced states.

In 1876 South Carolina, Florida, Louisiana, and Oregon sent a double set of returns, one set in favor of Tilden and one set in favor of Hayes. The election would be determined by which sets were accepted. The senate was republican and the house democratic. To deal with the matter a law was passed that no vote of a state should be rejected except by concurrent action of the two houses; and that all duplicate returns should be referred to a commission of 15, made up of 5 senators, 5 representatives, and 5 justices of the supreme court. The republican returns were accepted by a vote of 8 to 7, and Hayes was allowed 185 electoral votes, to 184 for Tilden.

In 1887 a law was passed providing that state decisions of all contests as to electors should be final, but prescribing action in case double returns were presented.

The electors are **appointed** by each state as the legislature may direct (54), but every state now puts electors upon the general ticket at the November election. There is no other qualification for an elector except that he does not hold office of trust or profit under the United States (54).

The **number** of electors from each state is that

of the combined number of senators and representatives (see page 561).

Congress names the time of choosing the electors (**56**), and has fixed on the Tuesday next after the first Monday in November of the years divisible by 4. The electors vote for president in their respective states (**95**) usually at the capitols, on the 2d Monday in January following.

Certified lists are sent to Washington and on the 2d Wednesday of February are opened by the president of the senate in the presence of both houses of congress (**95**).

Originally the electors voted only for president, each casting 2 votes; the person having the greatest number of votes for president was, if this made a majority, made president, and the person having the next greatest number of votes for president was made vice-president (**55**). Thus in 1796 Adams and Jefferson, belonging to different political parties, were made president and vice-president. The electors now vote (**95**) both for president and for vice-president, and those having a majority of votes for each office are elected.

It is provided (**95**) that the elector may not vote for both president and vice president from his own state; though this does not forbid the election of both from one state, it makes it inexpedient for a party to nominate candidates for both from one state, and it is never done.

If no person has a majority for the presidency the house of representatives immediately elects a president from the 3 candidates having the highest number of votes, the members from each state having one vote, and a majority of states being necessary to choice (95). Should the house fail to elect by March 4 following, the vice-president acts as president.

This has happened twice, in 1801 and in 1825. In 1801 both Jefferson and Burr had an equal number of votes, and a majority (as could happen, since each elector cast 2 votes for the same office). The protracted contest led to the 12th amendment (95).

In like manner if no person has a majority for the vice-presidency, the senate elects a vice-president from the two having the most votes, in this case voting individually, and a majority necessary for choice (96).

This happened in 1836, when Johnson received 147 votes out of 294. He was elected by the senate.

So far from taking the election of president out of politics, as was expected, the electoral college has left the presidency the principal aim and reward of political maneuvre.[1] The growth of the caucus from the early nominations for president has already been noted (see page 176). In the

[1] B ii.172–183, 244–216.

nomination of a president the full caucus machinery is employed. The town caucus elects delegates to the county or assembly district convention; this elects delegates to the state convention; and this elects delegates to the **national convention**, which is called by the national committee named at the last national convention.

Bryce asks why these conventions should be so pre-eminently tempestuous, considering that they are not casual concourses, but consist of persons duly elected, and are governed by a regular code of procedure; and replies that in them are united the two conditions which generate excitement, viz., very large numbers and important issues to be determined. In no other modern assemblies do these conditions concur.[1]

The **number of delegates** allowed each state is twice as many as it has electoral votes (see page 365), 2 for each congressional district, and 4 delegates-at-large to represent the senators,[2] to which the republican convention adds 2 from each territory, and 1 from the District of Columbia, though these have no votes in a presidential election (see pages 358, 360).[3] This gives some 800 delegates, and there are usually more than 10,000 spectators, making a host larger than the army with which the Greeks conquered at Marathon.[4]

[1] B ii.216. [2] B ii.173. [3] B ii.175. [4] B ii.217.

The republican convention votes by individuals, and nomination requires a majority of the delegates. The democratic convention by what is called the **unit rule** votes by states, the entire vote of the state being cast as the majority elect; and nomination requires a $\frac{2}{3}$ vote.[1]

After organization and settling contests as to which are legitimate delegates, the first business is the adoption of a platform.[2] The nomination is made by calling the roll of states, the candidate usually being nominated by some delegate from his own state, and seconded by one or several delegates, all delivering carefully prepared speeches. There are usually from 8 to 12 candidates.[3]

Then the balloting begins. Sometimes, as of Martin Van Buren in 1835, Henry Clay in 1844, and McKinley in 1900 the choice is made by acclamation; sometimes it takes days. In 1852 Pierce was nominated on the 49th ballot, and Scott on the 53d.[4] Bryce says (ii.180): "What a party wants is not a good president but a good candidate;" and if it develops that the man most thought of cannot win, a "dark horse" is introduced. Thus in the republican convention of 1880 Garfield, who up to the 34th ballot had not received more than 2 votes, was nominated on the 36th; and in 1868, Seymour got his first

[1] B ii.175. [2] B ii.176, 323. [3] B ii.176. [4] B ii.177.

vote upon the 22d ballot, which nominated him.[1]

In 1888 the republican convention voted by 716 to 3 that every member of the convention is in honor bound to support the nominee; but in 1884 the motion could not be carried, and many of the delegates voted the democratic ticket[2] (see page 179).

In case of **vacancy** the vice-president becomes president. It was in this way that Tyler (1841), Fillmore (1850), Johnson (1865), Arthur (1881), and Roosevelt (1901) became presidents.

When Tyler succeeded Harrison the cabinet proposed to call him acting president, but he insisted upon the full title of president. The articles of impeachment against Johnson described him as president of the United States.

In case of vacancy in both the offices of president and vice-president, the members of the cabinet perform the duties till the vacancy is filled in the following order:

1. secretary of state; or if there be none,
2. secretary of the treasury; or if there be none,
3. secretary of war; or if there be none,
4. attorney general; or if there be none,
5. postmaster general; or if there be none,
6. secretary of the navy; or if there be none,

[1] B ii.182. [2] B ii.178.

7. secretary of the interior; or if there be none,

8. secretary of agriculture.

Whenever a cabinet officer assumes the duties of president, if congress is not in session or is not to meet within 20 days, he must convene congress.

To be eligible the members of the cabinet must have been appointed by the advice and consent of the senate, must have the constitutional qualifications for president, and must not be under impeachment.

The **qualifications** required are, (*a*) he must be a native born citizen, (*b*) 35 years of age, and (*c*) 14 years a resident (57).

It is assumed that, though born here, if he has spent all but 13 years of his life abroad he has hardly the acquaintance with our institutions or the interest in them to qualify him for the office.

The **salary** is $50,000. Congress may increase or diminish it, but not so as to affect the president in office (59). The makers of the constitution feared to make it possible for congress to influence the action of a president by changing his salary. The salary was $25,000 up to 1873. He has also the White House as an executive mansion, with fuel, light, care, and many other allowances.

The **oath** he takes is as follows: "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States; and will to the best of my ability preserve, protect, and defend the constitution of the United States" (**60**).

The 5 vice-presidents all took this oath when they became presidents.

CHAPTER XXXVII

POWERS OF THE PRESIDENT

While the power of the president is chiefly executive, he has like the governor **legislative** power (**24, 25**) through the veto,[1] the conditions of which are substantially the same as in New York (**191**; see page 242).

Bryce goes so far as to say (i.222): "The president is commander-in-chief of the army, but the numbers and organization of the army are fixed by statute (see page 397). The president makes appointments, but the senate has the right of rejecting them, and congress may pass acts specifying the qualifications of appointees, and reducing the salary of any official except the president himself and the judges. The real strength of the executive, therefore, the rampart from behind which it can resist the aggressions of the legislature, is in ordinary times the veto power. In other words, it survives as an executive in virtue not of any properly executive function, but of the share in legislative functions which it has received; it holds its ground by force, not of its separation from the legislature, but of its

[1] B i.52, 220; Hadley, page 80.

participation in a right properly belonging to the legislature."

Like the governor, too, (see page 191) he may call special sessions of both houses of congress, adjourn them when they fail to agree as to a time, and recommend at all sessions such measures as he considers desirable (**64**).

The president's message, as his address to congress at its opening is called, is a document of much moment. He has full information concerning all the departments of government (**61**), and often makes known in his message for the first time what have been secrets of diplomacy.

Washington and John Adams delivered their messages orally, but Jefferson began the custom that has continued of sending a written message.[1] The king's speech is always read in parliament.

Like the governor (see page 193) he has the **judicial** power to grant reprieves and **pardons,** except in case of impeachment (**61**). Large classes of citizens are usually pardoned by congress.

But, like the governor (see page 191), his power is mainly **executive** ; "he shall take care that the laws be faithfully executed" (**64**). In this respect his power and his responsibility are greater than those of the governor, because the entire machinery of federal government is directly under

[1] B i.205.

him, instead of being largely local, as in the state (see page 353).[1]

Bryce says (i.76): "Four-fifths of his work is the same in kind as that which devolves on the chairman of a commercial company or the manager of a railway, the work of choosing good subordinates, seeing that they attend to their business, and taking a sound practical view of such administrative questions as require his decision. Firmness, common sense, and most of all, honesty, an honesty above all suspicion of personal interest, are the qualities which the country chiefly needs in its chief magistrate."

Of course he must execute the laws as he finds them; he can not pronounce upon the wisdom of a law; if it stands on the statute books he must obey it as implicity as his stable-boy,[2] though Andrew Jackson assumed further power (see page 290). In the attempt of the makers of the constitution to keep entirely distinct the executive and the legislative departments[3] (see page 376) congress is allowed in many ways to hamper him.[4] It may refuse to grant him the legislation he asks for,[5] or it may attach to an important bill provisions that he must assent to in order to save the bill.

Thus in 1867 congress attached to the appro-

[1] B i.508. [2] B i.213. [3] B i.86, 220, 277, 283.
[4] B i.285, 288. [5] B i.208.

priation bill a clause that virtually took the command of the army from President Johnson and gave it to Gen. Grant; and the president, lacking the power of the governor to veto certain items (**191**), yielded, because the majority was sufficient to over-ride a veto. In 1879 congress attached to important bills measures affecting the south. The president vetoed them in two successive sessions, and resisted successfully because the majority in congress could not command a $\frac{2}{3}$ vote.[1]

Bryce says (i.215, 211, 221; see also 285): "The struggle for popular liberties in England took at first the form of a struggle for the supremacy of law; that is to say, it was a struggle to restrain the prerogative of the king by compelling his ministers to respect the ancient customs of the land and the statutes passed in parliament. As the customs were always maintained, and the range of the statutes constantly widened, the executive was by degrees hemmed in within narrow limits, its discretionary power restricted, and that characteristic principle of the constitution, which has been well called 'the reign of law', was established." * * *

"Power means nothing more than the extent to which a man can make his individual will prevail against the wills of other men, so as to con-

[1] B i.211, 215, 220, 285.

trol them. Hence, when the law gives to a magistrate a wide discretion, he is powerful, because the law clothes his will with all the power of the state. On the other hand, if the law goes into very minute details, directing the official to do this and not to do that, it narrows the discretion of the executive magistrate. His personal will and choice are gone. He can no longer be thought of as a co-ordinate power in the state. He becomes a mere servant, a hand to carry out the legislative bidding of the brain, or, we may even say, a tool in the legislative hand." * * *

"When the two houses are of one mind, and the party hostile to the president has a $\frac{2}{3}$ majority in both, the executive is almost powerless. It may be right that he should be powerless, because such majorities in both houses presumably indicate a vast preponderance of popular opinion against him. The fact to be emphasized is, that in this case all 'balance of powers' is gone. The legislature has swallowed up the executive, in virtue of the principle from which this discussion started, viz., that the executive is in free states only an agent who may be so limited by express and minute commands as to have no volition left him."

But Bryce says further (i.278, 68, 61, 269, 90; see also 50): "Nevertheless his office retains a

measure of solid independence in the fact that the nation regards him as a direct representative and embodiment of its majesty, while the circumstance that he holds office for 4 years only makes it possible for him to do acts of power during those 4 years which would excite alarm from a permanent sovereign. Entrenched behind the ramparts of a rigid constitution, he has retained rights of which his prototype the English king has been gradually stripped." * * *

"Once or twice, as when Jefferson purchased Louisiana, and Lincoln emancipated the slaves in the revolted states, he has courageously ventured on stretches of authority, held at the time to be doubtfully constitutional, yet necessary, and approved by the judgment of posterity."

"Abraham Lincoln wielded more authority than any single Englishman has done since Oliver Cromwell."

"The American people have a practical aptitude for politics, a clearness of vision and capacity for self-control never equalled by any other nation. In 1861 they brushed aside their darling legalities, allowed the executive to exert novel powers, passed lightly laws whose constitutionality remains doubtful, raised an enormous army, and contracted a prodigious debt. Romans could not have been more energetic in their civic duty, nor more trustful to their magistrates. When

the emergency had passed away the torrent which had overspread the plain fell back at once into its safe and well-worn channel. The reign of legality returned; and only four years after the power of the executive had reached its highest point in the hands of President Lincoln, it was reduced to its lowest point in those of President Johnson. Such a people can work any constitution."

Some comparisons between the power of the president and those of the governor[1] and of the king of England may be found interesting.

President	*Governor*
must be a native;	must be a citizen;
must be 35 years old;	must be 30 years old;
must have been 14 years a resident;	must be a resident;
salary $50,000 and residence;	salary $10,000 and residence;
term 4 years;	term 2 years;
directs foreign policy;	no such power;
commands army and navy;	commands militia;
controls post-office appointments;	no state post-office;
must veto all the provisions of a bill if any.	may veto some provisions of an appropriation bill and approve the rest.

[1] B i.508.

President	*King of England*
chosen by election;	chosen by heredity;
term 4 years;	term for life;
salary $50,000;	allowance, about $2\frac{1}{2}$ millions;
can not declare war;	may declare war;
always sits in cabinet meetings;	never does;[1]
has veto power;	does not have it;
submits treaties to senate;	makes them absolutely;[2]
submits important appointments to senate;	makes them absolutely;
has no ecclesiastical patronage;	has enormous ecclesiastical patronage;[3]
may not confer titles;	may do so at will;
can not dissolve congress;	may dissolve parliament at will;
keeps his cabinet throughout the term.	changes his cabinet when it ceases to command majority.[4]

The **vice-president,** like the lieutenant-governor (see page 198), cuts a small figure except for the possibility of there being a vacancy in the presidency (**95**; see page 370).

He is like the lieutenant-governor presiding officer of the senate, with a casting vote in case of a tie, but he cannot like the lieutenant-gov-

[1] B i.90. [2] B i.37. [3] B i.217. [4] B i.271, 281.

ernor appoint committees (see page 245), that power being in the hands of the senate.

In election he is always associated with the president, the qualifications and manner of nomination and election being the same (**65, 95**; see page 371).

The presidents from New York by election have been Martin Van Buren (1837–41) and Grover Cleveland (1885–9, 1893–7); by succession, Millard Fillmore (1850–53), Chester A. Arthur (1881–5), and Theodore Roosevelt (1901——).

The vice-presidents elected from New York are as follows: George Clinton (1805–12); Daniel D. Tompkins (1817–25); Martin Van Buren (1833 7); Millard Fillmore* (1849–50); William A. Wheeler (1877–81); Chester A. Arthur* (1881); Levi P. Morton (1889–93); Theodore Roosevelt* (1901).

* Succeeded to the presidency.

CHAPTER XXXVIII

CIVIL SERVICE REFORM

One source of the president's power is his control over **appointments.**[1] Directly or indirectly all executive offices are filled by men whom he names (**62, 63**). True, his most important nominations must be confirmed by the senate,[2] but he alone has the initiative of selection.

This has been a burden and a danger, as well as a power. Their constituents have besieged congressmen for government offices; congressmen have besieged the president; and time that should have been given to weightier matters has been spent in calculating how patronage should be distributed. Vice-president Colfax told of a clergyman from a small town who called on President Lincoln in the interest of a man who wanted to be postmaster there, and began by sympathizing with Mr. Lincoln upon the enormous responsibility with which the war was loading him down.

"Oh, it is not the war," replied Mr. Lincoln; "I can get along with the war very well. It is your plaguy little post-office that is killing me."

[1] B i.207. [2] B i.106.

The **civil service** is the general term applied to the vast army of persons that are employed in the state or government offices, as clerks, accountants, inspectors, keepers, etc.

In England great abuses arose because those in power appointed as subordinates in public offices through favoritism, using the appointing power as **patronage** (from Latin *pater;* see page 148), and choosing men not because they were fitted but because they were relatives, or friends, or had rendered services to the party; sometimes because they had paid money to be appointed.

This led to **civil service reform,** under which parliament decreed that no officer should be displaced so long as he did his duty; that vacancies should be filled by those in lower places so far as competent; and that new appointments should be made only by competitive examination, in which the political affiliations were not considered. This is known as the **merit system.**[1]

In the early years of the United States government office was regarded as a public trust,[2] and new administrations did not think it necessary to make changes in subordinate offices. Washington displaced only 8 persons, and all for cause; John Adams but 9, Jefferson but 39; in the 16 years that followed only 16 were removed.

[1] See Report of New York senate committee, 1895, pp. iv., v.

[2] B ii.54.

Madison held that the wanton removal of meritorious officers would subject the president to impeachment.

In 1820 congress made 4 years the term of many offices, but no removals were made till Andrew Jackson in 1829 at once displaced 500 postmasters.[1] In Jackson's second term, Calhoun reported to the senate that the tendency of this practice was to commit the entire body of those in office into corrupt and supple instruments of power, and to raise up a host of hungry, greedy, and subservient partisans, ready for every service, however base and corrupt.

Unfortunately, President Jackson was following a New York precedent. Before 1820 Governor Clinton complained of "an organized and disciplined corps of federal officials interfering in state elections". In 1832 Marcy defended in the United States senate the system of partisan removals and short terms from the example of his own state. "They [the New York politicians] when contending for victory avow the intention of enjoying the fruits of it. They see nothing wrong in the rule that to the victor belong the spoils of the enemy."[1]

One bulwark of this system was the doctrine of **rotation in office** which formerly prevailed. Maryland in her constitution of 1867 declared:

[1] B ii.126.

"A long continuance in the executive departments of power or trust is dangerous to liberty; a rotation, therefore, in those departments is one of the best securities of permanent freedom."[1]

Bryce says (ii. 127–129): "'Rotation in office' was, and indeed by most men still is, held to be comformable to the genius of a democracy. It gives every man an equal chance of power and salary, resembling herein the Athenian and Florentine system of choosing officers by lot. It is supposed to stimulate men to exertion, to foster a laudable ambition to serve the country or the neighborhood, to prevent the growth of an official caste, with its habits of routine, its stiffness, its arrogance. It recognizes that equality which is so dear to the American mind, bidding an official remember that he is the servant of the people and not their master, like the bureaucrats of Europe. It forbids him to fancy that he has any right to be where he is, any ground for expecting to stay there. * * *

"Another and a potent reason why the rotation plan commended itself to the Americans is to be found in the belief that one man is as good as another, and will do well enough any work you set him to, a belief happily expressed by their old enemy King George the Third when he said that 'every man is good enough for any

[1] B i. 426.

place he can get.' In America every smart man is expected to be able to do anything that he turns his hand to, and the fact that a man has worked himself into a place is some evidence of his smartness. He is a 'practical man'. This is at bottom George the Third's idea; if you are clever enough to make people give you a place, you are clever enough to discharge its duties, or to conceal the fact that you are not discharging them."

The **spoils system** grew until it became understood that with a change of administration all officers and employes would be displaced, and the struggle between parties was no longer for principles but for places. There were 120,000 such places, and every senator and congressman had hundreds of applications from his constituents, which took more of his time than he had left for his legitimate duties.[1] The conception of a public office became that of a snug berth to be bestowed upon a favorite,[2] and bore its natural fruit in building up professional politicians and bosses (see page 185),[3] the source of whose power is the desire for office as a means of gain.[4] Patronage led naturally to **jobbery**, where contracts were given for a money consideration. "The very powerlessness of India to protect itself against official abuse brought hon

[1] B ii.155. [2] B ii.127. [3] B ii.130. [4] B ii.102.

to the English mind the fact that public unmorality meant public immorality."[1]

In 1853 congress passed a law requiring clerks to pass an examination; but it was of no avail, because those who should have executed it were hostile to it. The same was true of the law for competitive examinations passed in 1871.

In 1883 both the United States and New York passed statutes similar in purport and which still regulate appointments.

The rules adopted by the president and in force by the national commission provided for:

(1) competitive examinations;

(2) positions to be filled from those who rank highest in examination;

(3) apportionment of appointments among the states according to population;

(4) probation before permanent appointment;

(5) no requirement upon place-holders of contribution or political service, and no receipt of contributions in United States buildings or grounds;

(6) no use of office to coerce political action of any one;

(7) non-competitive examinations when competent persons do not compete;

(8) full record of all examinations, appointments, etc.;

[1] Hadley, page 15.

(9) not more than 2 members of any one family to be appointed;

(10) no recommendation of senator or congressman to be received, save as to character.

The work is under 3 **civil service commissioners,** at a salary of $3,500, who appoint a **chief examiner** at $3,000, and boards of examiners in the states and territories as needed.

Substantially the same rules (**200**) prevail in the civil service system of New York (see page 209). In 1897 Gov. Black's message declared in favor of "taking the starch out" of the civil service laws; and a bill was passed providing that the examination by the civil service commission should count only 50%, while the other 50% should be estimated by the head of the department on the basis of "practicability". This law, which was considered a disgrace upon Gov. Black's administration, was repealed in 1899.

Whether the president has the power of removal without consent of the senate had been doubted, and congress by a slight majority passed a law giving him that power, since when it has never been questioned.[1]

In 1866, however, congress passed a law forbidding the dismissal of military or naval officers except by sentence of court-martial; though by a law passed in 1867, but repealed in 1887, the

[1] Story, § 1543.

power was for a time modified, the immediate purpose being to tie the hands of President Johnson.[1]

The power to fill vacancies that happen during the recess of the senate (**63**) is held to cover the first appointment to a new office.

He **commissions** all officers of the United States (**64**). The commission is a formal document, reciting definitely the powers conveyed, and sealed by the secretary of state with the great seal of the United States (see page 195).

[1] B i.59, 384.

CHAPTER XXXIX

THE PRESIDENT'S CABINET

We have seen that in England the early kings used to have a council, out of which eventually parliament was developed (see page 120). But the need of a council remained, and developed into the English ministry of the present day. In most of the colonies the governor had a council, often corresponding with a colonial senate (see page 223), and it was natural that the federal government should provide for some body of advisors to the president.

The constitution, however, makes no mention of the cabinet, except that in authorizing congress to vest the appointment of inferior officers in the "heads of departments" (62) it assumes that there will be such officers; and there have been from the first.

The cabinet corresponds with the state administrative officers (see page 200); but note these differences:

Cabinet appointed by the president	*Administrative officers elected by the people*
subordinate to the president;	coördinate with the governor;

always of the same party as president;	not necessarily same party as governor;
term 4 years;	term 2 years;
salary $8,000;	salary $5,000;
secretary of state, great honor and responsibility;	secretary of state, duties mostly clerical;
attorney general;	attorney general;
secretary of the interior;	engineer and surveyor has a very few of his functions;
secretary of the treasury;	comptroller (salary $6,000; treasurer; *appointed by the governor* sup't of banking ($7,000);
secretary of agriculture;	agricultural commissioner ($4,000);
secretary of war;	no such department;
secretary of the navy;	no such department;
postmaster general.	no such department.

The most important distinction is that while the cabinet is appointed by the president and subordinate to him, the administrative officers are elected like the governor, and are his colleagues in government, dividing with him the executive functions.

The differences between the English ministry[1] and the federal cabinet, with some correspondences more or less remote, are thus shown:

The president's cabinet	*The English ministry*
all of equal rank;	prime-minister at the head;
appointed by the president;	prime-minister appointed by the king, always the leader of the opposition; the others by the prime-minister;
holds office for 4 years;	resigns when its measures cease to command majority vote in parliament;[2]
can not be members of congress;	must be members of parliament;
president always sits with it;	the king never;
salary $8,000;	salary usually $25,000;
secretary of the treasury;	first lord of the treasury; chancellor of the exchequer;
secretary of war;	secretary for war;
secretary of the navy;	first lord of the admiralty;

[1] B i.273. [2] B i.186, 209, 271.

secretary of state;	lord privy seal; home secretary; secretary for Scotland; secretary for Ireland; foreign secretary; colonial secretary; secretary for India;
postmaster general;	postmaster general;
secretary of agriculture;	president board of agriculture;
attorney general;	attorney general; solicitor general;
not in cabinet	
vice-president; chief justice;	lord chancellor;
commissioner of education.	lord president of the council.

The most important difference is the tenure of office. The English ministry resigns when it can no longer control a majority in parliament; the American cabinet remains in office during the term of the president, though any member may be dismissed by him at any time.

President Johnson proposed to dismiss the members of Lincoln's cabinet who had not resigned, whereupon congress passed a tenure-of-office act to prevent the removals. The president insisted and was impeached; but on the trial a single vote was lacking to convict, secre-

tary Stanton resigned, and the senate confirmed the president's nomination.

Another difference is the power of choice. In England the king originally appointed his ministers, but now when the ministry is defeated, the leader of the opposition party must be summoned and asked to form a ministry.

The president has full power to appoint all the members of his cabinet, and though the senate has the nominal power to reject his nominations it has seldom done so. In 1833 it rejected Roger B. Taney; and in 1869 A. T. Stewart (see p. 406).

Still another difference is in responsibility. The English ministers are always members of parliament; they bring forward the measures they have prepared, nominally under instructions of the king,[1] defend them, and carry them if possible. If these measures are passed, the ministers are responsible for them (see below).

In the effort to keep the executive and legislative departments entirely distinct, the members of the cabinet are constitutionally prohibited from being members of congress (22), which passes its laws independently of them; hence there is divided responsibility.[2]

A fourth important difference is that the king never sits in his cabinet, so that he may not be held accountable for its action; while the presi-

[1] B i.53. [2] B i.277, 217.

dent always does, because he is accountable and needs its advice.[1]

The salary of cabinet officers is $8,000. Their rank may be indicated from the order in which they become eligible to the presidency (see page 370).

There are several general requirements for all civil officers of the United States. No congressman may be appointed to any civil office created or increased in salary during the time for which he was elected (22; see page 437). Civil officers may not be presidential electors (54), or congressmen (22); or, except by permission of congress, accept present, emolument, office, or title of any kind whatever from any king, prince, or foreign state (50; see page 344).

All civil officers, including the president and vice-president, may be removed from office by impeachment for treason, bribery, or other high crimes and misdemeanors (65; see page 458).

All officers are bound by oath to support the constitution (82). In 1862 congress prescribed what was called the "iron-clad" oath, that the person had never taken arms against the United States or aided its enemies, or sought or held office under any government hostile to the United States. It was pronounced by the supreme court unconstitutional (46) so far as it applied to attorneys of that court. It was repealed in 1884.

[1] B i. 90.

CHAPTER XL

STATE, WAR, NAVY, POST-OFFICE DEPARTMENTS

The **secretary of state** occupies the place of honor in the cabinet. He receives all ambassadors from abroad and introduces them to the president, and has general charge of our international relations (see page 462). Though now known as the department of state, this office was formerly called the department of foreign affairs, showing the original conception of its purpose.

The secretary of state is also the guardian of the archives of the government. He keeps the seal of the United States, and affixes it to commissions issued by the president. All the acts and resolutions of congress are filed in this department. All the papers relating to pardons are kept here.

The secretaries of state from New York have been Martin Van Buren (1829–31), William L. Marcy (1853–57), William H. Seward (1861–69), Hamilton Fish (1869–77), and William M. Evarts (1877–81).

The **attorney general** is, like the state attorney general (see page 201), the chief law officer of

the government, and conducts suits in the supreme court in which the United States is a party. He has general supervision of the various district attorneys and marshals of the United States (see page 284). When requested he gives legal opinions to the president and the cabinet officers.

He is assisted by a solicitor general (see page 259), salary $7,000; and by 6 assistant attorney generals, 5 of them at $5,000, and 1 at $4,000.

The attorney generals from New York have been Benjamin F. Butler (1833–8),[1] Wm. M. Evarts (1868–9), Edwards Pierrepont (1875–6).

The **secretary of war** is the agent of the war legislation of congress (**36–41**). He is at the head of the war department, and under direction of the president has charge of the army. As the constitution forbids the states to keep standing armies (**52**), the national troops are the only regular soldiers (see page 196).

The secretaries of war from New York have been John Armstrong (1813–14), Peter D. Porter (1828–9), Benjamin F. Butler (1837), John C. Spencer (1841–3), William L. Marcy (1845–9), Daniel S. Lamont (1893–7), Elihu Root (1899–).

The act of April 22, 1898, declares that the military forces of the United States consist of all able-bodied men between the ages of 18 and

[1] Prentice, page 409

45 (compare page 193). In 1880 the army consisted of 26,000 men. In 1898 the regular army was increased to about 60,000. The law of March 2, 1899, authorized the president to maintain the regular army at a strength of not more than 65,000 until July 1, 1901, when it was to be reduced to the numbers it had prior to 1898, excepting a small increase of artillery The same law also authorized a temporary volunteer army of 35,000.

Congress has power to make rules for the army (**37–40**). The present **articles of war** number 128; they are mainly as first adopted in 1806; they must be signed by every officer, read to every recruit at time of enlistment, and read every six months to all troops.

Flogging in the army was abolished in 1812, but from 1833 to 1861 there was an exception in case of deserters.

Congress alone has the power to declare war (**36**; see page 469). It may also make appropriations to carry on a war, but only for two years in advance (**37**), thus giving the people opportunity to elect a new house if it disapproves of the war.

This had been the rule in England for more than a century before the American revolution.

Congress has power to call out the militia (**41**); (see page 196).

Congress also makes rules for captures on land and water (36). Such property is usually distributed among the captors, but it must be proved that the property was taken from the enemy.

Congress has exclusive power (36) to grant **letters of marque** (a French word meaning boundary), authorizing persons to cross a frontier and take the persons or property of another nation, **and reprisal** (from Latin *re* back and *prehendere*, to take, a re-taking) authorizing the captain of a vessel to seize the property of a foreign nation, or its subjects as a reparation for some injury. When given to the master of a vessel, the latter becomes a **privateer** (from Latin *privus*, single), and may do what without these letters would be the act of a **pirate** (35; see page 473).

Blackstone says letters of marque and reprisal are grantable by the law of nations wherever the subjects of one state are oppressed or injured by those of another, and justice is denied by the state to which the oppressor belongs.

Letters of marque are sometimes issued before war is declared; sometimes they occasion war, and sometimes prevent it.

Most nations have mutually agreed to abolish privateering, and while the United States has not entered into such agreement it did not allow privateering in 1898 during the war with Spain.

The secretary of war has immediate control of the **West Point** military academy, and of similar schools to be established.

Most of the engineering work in the District of Columbia (see page 360) has been done by army engineers, and these are employed in government work upon rivers and harbors all over the country.

The war department has incidentally developed functions that pertain to peace. Thus the **signal service,** originally formed to communicate between one part of the field and another by flags and other signals more rapidly than would be possible by messengers, naturally gave notice of approaching storms; in this way grew up the meteorolgical or **weather bureau,** which gets reports from hundreds of stations all over the country, and publishes the probable weather for the coming 24 hours. This has proved of great value, especially to farmers and to seamen. These functions became so important that the bureau was transferred to the department of agriculture (see page 421).

The **secretary of the navy** executes the laws of congress relative to the navy (38), under general direction of the president. He also has charge of the naval school at **Annapolis.**

The secretaries from New York have been Smith Thompson (1818–23), James K. Paulding

(1838–41), William C. Whitney (1885–9), and Benjamin F. Tracy (1889–93).

The **postmaster general** has charge of the post-offices of the country and the carrying of the mails.

The postmaster generals from New York have been Francis Granger (1841), Nathan K. Hall (1850–2), Thomas L. James (1881), Wilson S. Bissell (1893–5).

The carrying of private letters by the government was first undertaken by government in England, about the time the English colonies were founded here. In 1639 Massachusetts ordered that all letters from abroad be taken to the house of Richard Fairbanks, who was allowed one penny each for taking care of them. In 1657 Virginia passed a law requiring every planter to convey letters to the next plantation. In 1672 New York city established a monthly mail to Boston.

In 1704 England created the office of postmaster general of America, but little was done till in 1753 Benjamin Franklin became deputy. He had been postmaster of Philadelphia, and he so improved the service that it more than paid expenses. When he was removed in 1774 there was for a time no public postal service.

In 1775 the continental congress made him postmaster general, and in 1789 congress recog-

nized the post-office department as existing. The postmaster general became a cabinet officer in 1829.

There are some 75,000 post-offices. The postmasters were at first all appointed by the postmaster general, but in 1863 all appointments where the salary was $1,000 or more were entrusted to the president (see page 382).

Mail matter is divided into four classes,—**first-class** including letters and all sealed matter; **second-class**, including periodicals admitted to this class by the postmaster general; **third-class**, including all other printed matter; and **fourth-class**, including merchandise.

The rates are: 1st class, 2 cts. per ounce; 2d class 1 cent per pound; 3d class 1 cent for each 2 ounces; 4th class 1 cent an ounce. These rates apply to the Philippines and to Alaska. How low they are appears from the fact that in 1845 it cost 6 cents to send a letter 30 miles, and so on up to 25 cts. for sending it 400 miles. Yet it is probable that before long the letter rate will be only 1 cent per ounce.

As a protection against loss of money sent in the mail, letters may be **registered.** There is a special fee of 8 cents for which the post-office carries these letters in a separate pouch, and delivers them only upon receipt of the person to whom they are addressed. Since 1897 it has

been possible to recover from the government money lost in registered letters, to the amount of $10. The **money order** system is also under a special superintendent, and sends money safely for a small fee.

In Europe there is what is called a parcels-post division of the post-office, performing the functions of our express companies at much lower rates. The telegraph system of several foreign countries is also managed by the post-office as a national institution.

Letters have for a long time been delivered to their addresses in cities and villages; and now the system of **rural free delivery** is rapidly growing, by which carriers deliver letters at every farm-house, and take letters ready for mail.

The **foreign mails** are under a special superintendent.

The power of congress to establish post-roads (32) has been interpreted to authorize internal improvements. In 1803 congress authorized the use of 3% of the net proceeds of the sale of public lands in Ohio for the construction of roads there, and in 1806 it voted to construct the "national road" from the Potomac to the Ohio. Usually, however, the construction of roads has been left to the states. The postmaster general makes the contracts for carrying the mail.

Under authority of this provision an **inter-**

state commerce commission (see page 517) was established by congress in 1887, composed of 5 members appointed by the president and confirmed by the senate; salary $7,500. At that time 27 states had similar boards, but none of them could control railways except within their own states.

This commission is not connected with any of the departments of government.

This provision is also made authority for interference of the national government with railway strikes. To stop or hinder a train carrying United States mail is an offence against national laws, and will be prevented if necessary by United States troops (see page 349).

CHAPTER XLI

TREASURY DEPARTMENT

The **secretary of the treasury** is the financial head of the government, and it is through him that most of the financial laws passed by congress go into effect. Unlike the corresponding chancellor of the exchequer in England, who is the only member of parliament who ever introduces a bill to raise money, he has officially little influence upon the action of congress.[1]

In 1776 the continental congress appointed a standing committee to superintend the treasury, but in 1881 this was displaced by Robert Morris as superintendent of finance. For his wise management the country is indebted to him, perhaps second only to Washington, for its success in the struggle for independence.

The United States treasurer is an officer of this department. His salary is $6,000.

The secretaries of the treasury from New York have been Alexander Hamilton (1789–95), John C. Spencer (1843–4), John A. Dix (1861), Charles J. Folger (1881–4), Daniel Manning (1885–7), Charles S. Fairchild (1887–9). Alexander T.

[1] B i.171, 210.

Stewart was appointed by Gen. Grant in 1869, but not confirmed by the senate, being ineligible as an importer (see page 394).

The power of congress to establish **uniform weights and measures** (30) is exercised through him. Sales are usually by the pound, the bushel, the foot; and these must mean the same thing everywhere.

Congress has never made this uniformity obligatory; but in 1828 it adopted the English troy pound weight, and in 1836 it directed the secretary of the treasury to send to each state a set of the weights and measures on the British standard used in the custom house; these have been adopted by the states as their standards.

Congress legalized the metric system in 1866, and has passed some laws to encourage the use of the metric system, one of them making it possible to enforce contracts which employ this system. In 1875 it established a **bureau of weights and measures,** which in 1889 received copies of the international standard meter and kilogram. In 1893 the secretary of the treasury ruled that these should be fundamental standards, the yard being defined as $\frac{3600}{3937}$ of a meter, and the pound avoirdupois as $\frac{1}{2.20462}$ of a kilogram.

The secretary of the treasury controls the **money** (from Latin *moneta*, money) of the coun-

try. Money is the medium through which all other commodities are valued and exchanged. The Indians used furs and strings of beads for this purpose; but gold, silver, copper, and nickel have been found the most available by civilized nations. In early times silver and gold were weighed every time they were employed; the knights of the middle ages carried scales at their sides to weigh silver. Afterwards it was found more convenient to make **coin**, that is, pieces of a specified weight, stamped by the government or some authorized agent.

The value stamped upon a coin fixes its value within the jurisdiction of the government stamping it, but outside its real value is fixed by the commerce of the world (see page 410). Thus the Mexican silver dollar is worth in trade with other nations about half a dollar in gold, while an American silver dollar containing no more value in metal is worth anywhere a dollar in gold, because with the United States stamp upon it a dollar in gold or its equivalent may always be had in exchange for it.

One of the powers granted to congress alone (51) is to **coin money**, and this it does through the secretary of the treasury, at various **mints** (also from *moneta*), that in Philadelphia having branches in New York, Denver, and San Francisco.

All gold and silver coins have $\frac{1}{10}$ alloy, and are thus $\frac{9}{10}$ fine. English gold has $\frac{1}{12}$ alloy; English silver $\frac{3}{40}$.

The English government did not permit the colonists to coin money, though Massachusetts did so in 1652. The confederation did not coin money, but used the Spanish dollar or "piece of eight" as the unit. The dollar was adopted with a decimal system in 1785, but no coins were issued until the mint was established at Philadelphia in 1792.

The mints make no charge for coining gold, except for the copper used in the alloy. Uncoined gold and silver is called **bullion.**

The following coins are now struck off:

gold $2.50, $3, $5, $10, $20. The gold dollar weighs 25.8 grains, and contains 23.22 grains of pure gold;

silver $1, 50 cts., 25 cts., 10 cts. The silver dollar weighs $412\frac{1}{2}$ grains, and contains $371\frac{1}{4}$ grains of pure silver. The smaller coins weigh at the rate of 385.8 grains or 25 grams to the dollar;

nickle 5 cts.;

bronze 1 cent.

Other coins have been struck off and are sometimes used. The coinage of the gold dollar was discontinued in 1890.

Gold coins and silver dollars are **legal tender**

for any amount,—that is they must be accepted for all purchases, debts, and other obligations. Smaller silver coins are legal tender to the amount of $10. The nickle and bronze coins are legal tender to the amount of 25 cts. The states are forbidden to make anything but coin legal tender (**51**).

The reason why the final value of a silver coin depends upon the amount of gold it will procure is that the relation of gold to silver varies, as the quantity of each produced from the mines varies from year to year. Jefferson said: "The proportion between the values of gold and silver is a mercantile problem altogether." Thus in 1792 the value of a pound of gold was 15 times that of a pound of silver, the gold dollar containing $24\frac{3}{4}$ and the silver dollar $371\frac{1}{4}$ grains of pure metal; in 1901 it is 31 times the value of a pound of silver. At first the value of the gold increased; so in 1834 the pure gold in the dollar was reduced to $23\frac{1}{5}$ grains, making the ratio 16 to 1. Then silver began to increase in relative value, and the silver coin was worth more by weight than gold coin, whereupon it disappeared from circulation.

It became manifest that there must be only one standard, and gold was chosen. Great Britain had adopted gold as a standard in 1816, silver being legal tender only for 40 shillings. In

1853 the silver coins below the dollar were made lighter, two half-dollars having 345.6 grains of pure silver instead of 371¼, so as to be worth by weight less than gold coins. This kept them in circulation, and as they can be exchanged for gold there is no loss in accepting them.

In 1873 the silver dollar was dropped, but in 1878 it was restored and made legal tender for debts. The coinage was to be not less than 2 millions a month. In 1890 congress passed the Sherman act, requiring the secretary of the treasury to buy 4½ million ounces a month, but repealed it in 1893. In 1898 congress directed the secretary to coin the silver purchased under the Sherman act at the rate of not less than 1½ millions a month, and in 1900 directed that the dollars so coined be used to redeem treasury notes, which are then to be cancelled and retired.

When the silver dollar was dropped in 1873, a silver coin was adopted for trade with China of the same weight as the Mexican dollar much used in eastern trade, and somewhat heavier than an old silver dollar. This was called a **trade-dollar,** and was legal tender until 1876, when although coined it became only bullion. In 1887 congress authorized standard dollars to be given in exchange for trade-dollars.

Congress also acts through the secretary of the treasury in fixing the value of foreign coins (see

page 407). Thus the English pound sterling is received by our government officers at $4.8665. No foreign silver coin is accepted or valued by the government. Since 1857 no foreign coin has been legal tender. Canadian silver and bills are sometimes refused except at a discount.

The secretary of the treasury has charge of all money paid into the treasury, and of all the disbursements. When there was a United States national bank the treasurer deposited his funds there. After the bank was discontinued the funds were distributed among certain state banks, and much loss resulted during the financial panic of 1837. In 1840 sub-treasuries were established, and are now located in

Baltimore,	New York,
Boston,	Philadelphia,
Chicago,	St. Louis,
Cincinnati,	San Francisco,
New Orleans,	Washington.

The constitution gives congress power (**26, 27**) which is exercised through this department to **raise money** (*a*) for the payment of debts, (*b*) for the common defence, (*c*) for the general welfare.

The confederation had no power to enforce enlistment or the raising of money, being dependent upon the voluntary action of the states (see page 351).

The term *general* welfare needed to be im-

pressed on the states, for at the time the constitution was formed they were jealous rivals of one another. But the term is so comprehensive that its interpretation has been one of the dividing lines of the two great parties (see page 182), the one sometimes claiming that it may be extended to cover a heavily protective tariff (see page 297), liberal appropriations for public improvements, etc., while the other has held its sense to be more restricted.

At the opening of congress the secretary of the treasury presents a report to congress, giving his balance-sheet for the preceding year, and his estimate of the amounts likely to be received and needed for the coming year. Usually the expenditures are more than the receipts, and provision is required to raise money; but sometimes there has been a surplus, the income from indirect taxes being more than was needed for the expenses of government and payments on the public debt. In 1901 this made it necessary to discontinue most of the stamps upon commercial paper (see page 298).

During President Cleveland's administration there was a surplus income of 100 millions. If allowed to accumulate this would absorb money from the channels of trade, so bonds not yet due were purchased at a premium, and money was

deposited in national banks. This was done also in 1901.

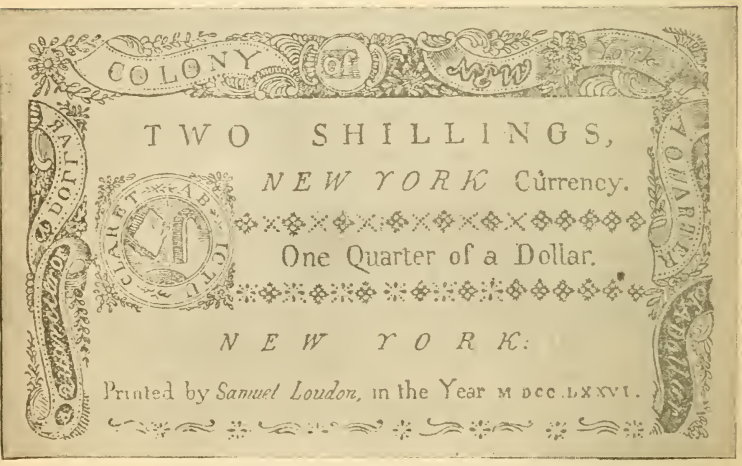
Congress raises money (1) by levying (*a*) **direct taxes,** (*b*) **imposts,** or (*c*) **excises** (see page 296); or (2) by **borrowing** (**27**). This is rendered necessary chiefly during wars, the civil war running up the amount of national debt to nearly 3,000 millions, the amount borrowed for the four years 1861–5 averaging nearly 600 millions a year. In 1891 the amount was 1,560 millions, and in 1900 2,105 millions, half of it interest-bearing. In 1901 that of England was $4\frac{1}{5}$ billions.

This money was secured partly by the issue of government notes, the "bills of credit" of the constitution (**51**; see page 342), which from their color were called **greenbacks,** and in 1862, against protest that the act was unconstitutional, were made a **legal tender** (see page 408) except for duties on imports and interest on the public debt, which are always payable in gold. The secretary of the treasury used these bills himself to pay the wages of soldiers and to buy supplies for the army. But as he had not coin in which to redeem these bills, the value of coin began to rise, till in July, 1864, it took nearly $300 in greenbacks to buy $100 in gold. As people were obliged to sell goods for greenbacks, they raised the prices accordingly, till a nominal dollar would buy only $\frac{1}{3}$ as much as before the war.

After the war ended in sustaining the govern-

ment, confidence grew and the price of gold fell till finally on Jan. 1, 1879, the day appointed by congress for the **resumption of specie payments**, that is for paying out at the treasury $10 in gold for every $10 in greenbacks offered, there were very few who wanted to make the exchange, and since then the two have been equal in value.

There was a similar issue of paper money by the confederation and by the colonies individually during the revolution, and a similar decrease in their value. The following is a New York


COLONY OF NEW YORK
TWO SHILLINGS,
NEW YORK Currency.
One Quarter of a Dollar.
NEW YORK:
Printed by Samuel Loudon, in the Year M DCC LXXVI.

STATE MONEY OF NEW YORK

bill of 1776. But this continental money was never redeemed. Pelatiah Webster said: "We

have suffered more from this cause than from every other cause or calamity."

Besides the greenbacks and national bank notes (see page 416), the government has issued gold and silver certificates, each entitling the holder to receive so many gold or silver dollars from the treasury. They are not legal tender, but are freely received.

The secretary of the treasury also has charge of the complicated and extensive national banking system. This is under the immediate direction of the **comptroller of the currency,** who issues an annual report. The first bank in the United States was chartered by the continental congress in 1781, and in 1791 congress established a Bank of the United States, with a charter for 20 years. At the end of that time, in 1812, congress refused to renew the charter, but, owing to the financial distress that ensued, in 1816 chartered another bank for 20 years. When the charter expired, its renewal was vetoed by both Presidents Jackson and Tyler, and it has never been re-established.

The states, however, chartered banks, with power to issue bank notes, though it is doubtful whether these were not the "bills of credit" prohibited to the states (51).

As there were thousands of these institutions each issuing its own bills, not only was counter-

feiting common, but it was not easy to know whether the bank was really able to redeem its bills. New York had required its state banks to deposit with a state officer sufficient property, usually bonds, to furnish ample security for the payment of its notes. In 1863, when the government needed money it adopted this New York system, put a prohibitive tax of 10% upon the bills of state banks to prevent their issue, and established in the treasury department a bureau of currency in charge of a system of **national banks**, to use only notes printed at Washington and secured by United States bonds deposited in Washington. This furnished a market for bonds, made the bank-notes of the entire country uniform, and provided government guarantee for the redemption of the notes. The power to do it was assumed from sections 27 and 28 of the constitution.

National bank notes are not a legal tender (see page 408), but each national bank is required to receive the notes of every other, and they are accepted for all dues to the United States except duties on imports.

A bank which does not issue notes is known as a **state bank.**

The convenience of bank notes is everywhere recognized. If oranges bought in New York from California could be paid for only in coin

the transportation would be costly and dangerous, but a bank note for $1,000 weighs no more and is as easily concealed as a bank note for $1.

There is however a chance of loss by theft, since whoever gets hold of the note can use it. In England, where bank-notes are never issued for less than $25, and when once paid into the bank are always destroyed and only fresh notes issued, it is common to keep the numbers of bank-notes as a precaution against theft.

Payment is much more common, however, in the use of a **bank check,** a written request to a bank from a person who has money on deposit to pay it to another person, which is usually payable only to the order of the person to whom it is sent, can be used only by him, and if lost or stolen may be **stopped**—that is the bank requested not to pay it (see page 527).

A **draft** (see page 197) or **bill of exchange** is a written request from one person to another, usually through a bank, directing the payment of money. When **accepted,** by writing across the face that word with the signature of the drawee, it has the effect, if at sight, of a check; if at a specified time after sight, of a note (see page 529).

Money may even be sent for and paid through the telegraph office.

Besides issuing bank-notes, congress borrows

money by authorizing the secretary of the treasury to sell bonds (see page 46), by which the government promises to pay the principal at a stated date, and meantime to pay quarterly interest at a certain percentage. Thus the bonds known as "1925 4's" are due in 1925, and meantime bear interest at 4 % a year.

These various issues require a great deal of printing, and to prevent counterfeiting this must be done on specially made paper from expensive plates and with precautions against theft. So the treasury department has a **bureau of engraving and printing.**

The power of congress to **regulate commerce** (28) is also exercised through the secretary of the treasury. Its most important application is in the collection of duties on imports (see page 297); and the prevention of any levy of duty by the states upon articles imported from other states (48). It must not discriminate among ports (48).

But it extends much farther. Under Jefferson it was even held to justify an embargo act that cut off all trade with foreign nations through the agency of American ships, and later a non-intercourse act that cut off trade with France and England.

While trade between states is made free, there are some limitations. A state may pass a law establishing inspection of oil or food-products or

cattle, and collecting the cost of inspection from the owners. But when Minnesota made a law requiring the inspection on foot, within the state, within 24 hours, of all fresh meat offered for market, the courts ruled it unconstitutional because the intent was not to protect the citizens but to protect local butchers. A Missouri law requiring a license of dealers in wool not produced in the state was declared unconstitutional because it did not apply to all dealers in wool. A Maryland law requiring license of all imports of foreign goods was declared unconstitutional because it had the effect of a duty on imports.

American vessels have many privileges over foreign vessels. The latter are not allowed to engage in our coast trade.

All vessels built and owned in this country must be duly **registered** on the collector's books.

When a vessel leaves a port it must obtain a **clearance**, or certificate that the law has been complied with in all respects. When it reaches another port it must be **entered**,—that is the captain must report its arrival to the collector of the port, give a statement of the cargo, and show his clearance from the last port.

Congress also passes many laws to render navigation safer, improving harbors, establishing light-houses and life-saving stations, requiring pilots, limiting the number of passengers, im-

posing quarantine, etc. The **coast survey** is in this department, and produces maps of immense value. The superintendent receives the same salary as the treasurer, $6,000.

So vast and complicated is the work of the treasury department that in 1901 Secretary Gage recommended the establishment of a new department to take the purely commercial business, and leave the strictly financial business for the treasury department.

In his message of 1901 President Roosevelt said:

"There should be created a cabinet officer, to be known as secretary of commerce and industries, as provided in the bill introduced at the last session of congress. It should be his province to deal with commerce in its broadest sense, including, among other things, whatever concerns labor and all matters affecting the great business corporations and our merchant marine."

France and Germany have each a minister of commerce, and England has a board of trade the president of which is a cabinet officer.

The United States has already a department of labor, with a commissioner whose salary is $5,000. This would probably be incorporated in such a cabinet office.

CHAPTER XLII

DEPARTMENT OF THE INTERIOR

The **secretary of agriculture** conducts experiments in farming and horticulture, and publishes for distribution among the people useful information on these and allied subjects. Information obtained from consular agents in other countries is made available for use here. For the weather bureau see page 400.

This work belonged to the department of the interior until 1862, when a commissioner of agriculture was appointed. The cabinet department was created in 1889. The secretaries have all been from the western states.

The **secretary of the interior** executes the laws of congress relative to internal affairs, with such a variety of functions, that the principal departments may best be treated separately.

The work of this department was formerly done by the state department, but was committed to a separate department in 1849.

The only secretary of the interior from New York has been Cornelius N. Bliss (1897–8).

The **commissioner of Indian affairs** exercises general control over the Indians, including

treaties, supplies, education, etc. Congress has entire charge over Indians living in tribes, but it sanctions state laws forbidding the sale of intoxicating liquors to Indians. When Indians break up their tribal relations they become subject to the government of the state or territory in which they live.

Commerce with Indian tribes is regulated by congress (28). It had been found hazardous to leave it to the states.

The **commissioner of the land office** has general charge of the survey and sale of public lands. The power to dispose of public lands is granted to congress (77) and through land offices in the states and territories they have been rapidly opened up to cultivation (see page 356). Our system of surveys was devised by Thomas Hutchins, first geographer of the United States. The land is first divided by meridians and parallels 6 miles apart into townships (see page 26), thus locating land and furnishing boundaries for local government. Each township is divided into 36 sections, each of a mile square. In most of the western states one of these sections is granted to the state for school purposes, and government marks are placed at every half mile. The government sells land in lots of 40 acres or multiples thereof. See page 356.

The **commissioner of pensions** examines claims

for pensions (from Latin *pendere*, to weigh), and grants them when found worthy. This is among the greatest expenditures of government, the pensions paid to soldiers of the war that ended in 1865, and their widows, amounting in 1901 to 138½ millions.

The **superintendent of the census** is appointed temporarily every ten years to conduct the census of that year.

The **superintendent of public documents** has charge of the distribution of public documents among the people.

The **commissioner of patents** has charge of the patent office. The right to grant patents is expressly conferred on congress (33).

To obtain letters of patent, the invention must not have been in use or on sale more than 2 years before making application; and full description, specifying the novel features claimed, with drawings and models, must be filed in the patent office, with a fee of $15. Examination is made of similar contrivances of which drawings, models, and specifications are on file, and if there is no conflict of claims and the object is patentable and desirable, letters patent are issued giving the inventor exclusive right to control its manufacture and sale for 17 years, which may be extended 14 years. The patented article must bear the word "patented", with the date of the

patent. To make, use, or sell such an article without consent of the patentee is an **infringement** (from Latin *in* and *frangere*, to break), and subject to heavy penalties. The final fee is $35.

This office also registers **trade marks**, the distinctive mark, device, or emblem that a manufacturer affixes to his goods to identify them. The period is 30 years.

Copyrights are granted by the librarian of congress. The term is 28 years, and may be extended 14 years longer. Until recently any title could be copyrighted, but there are now some restrictions. A fee of 50 cents is required with the application, which must have a printed or type-written copy of the full title; and when the book, picture, map, or other article is published, 2 copies must be sent to the librarian of congress, to complete the copyright. The copyrighted article must bear words in the following form: "Copyright, 1901, by C. W. Bardeen"; and to print, sell, or hold any copy of the same is an infringment, subject to penalty.

Since 1891 congress has permitted copyright on the same basis to citizens of foreign countries that grant us the same right, but the book must be printed from type set in the United States.

The **superintendent of the geological survey** has charge of this government work, including the measuring and mapping of rivers, mountains, etc.

There is no national supervision of education, that matter being left entirely to state control. The words education and schools are not found in the national constitution. Yet besides its military and naval schools (see page 400), it makes appropriations for Indian schools. Before the constitution was adopted it gave by the ordinance of 1785 at least one section of every township for education, and in 1862 it set apart public lands for agricultural colleges (page 323). In 1867 it established the **bureau of education.** The head of this, the **commissioner of education** is appointed to investigate into the condition and progress of the educational systems of the different states and territories. The annual reports of the commissioner have been the marvel of other nations for the fulness of their statistics and the usefulness of their generalizations. Other publications, like the series of circulars of information, have proved of untold value.

The anomaly is that this important office, filled as it is in 1901 by the man in the country best fitted for it, still carries the meagre salary of $3,000.

There is also a **commissioner of Indian affairs,** salary $4,000, under whom there is a superintendent of Indian schools.

Besides this government work under control

of the cabinet, there are many national institutions that should be mentioned.

The **national library,** opposite the capitol, is the largest in the country, and is in a building worthy of the country. The librarian, salary $4,000, has charge of copyrights; and the library receives 2 copies of every copyrighted book (see page 424).

The **Smithsonian institution** comes from a fund of more than half a million given to the United States in 1836 by an Englishman named James Smithson, to found an institution for the advancement and diffusion of knowledge. It now has a fund of a million, on which the government pays 6 % to the regents, who are the chief justice, the vice-president, and 3 senators appointed by him, 3 representatives appointed by the speaker of the house, and 6 citizens elected by joint ballot of congress (compare page 318). The buildings are made the repository of the **national museum,** maintained by congressional appropriations.

In 1901 Andrew Carnegie offered the national government 10 millions to establish a national university for post-graduate study and investigation, to be managed somewhat as the Smithsonian institute is managed.

There is a **fish commissioner** with duties corre-

sponding in part with those of the forest preserve commission (see page 210).

The protection of the forest reserves rests with the land office (page 422), the mapping and description of their timber with the geological survey (page 424), and the preparation of plans for their conservative use with the **bureau of forestry** in the department of agriculture, which is also charged with the general advancement of practical forestry in the United States. President Roosevelt recommended in 1901 that these various functions be united in the bureau of forestry, to which they properly belong.

The estimates for the cabinet departments offered by the secretary of the treasury in 1901 were as follows:

state	$ 2,446,328
justice	6,917,330
war	161,920,101
navy	100,701,122
post-office	4,464,966
treasury	156,484,925
agriculture	5,509,540
interior	161,710,535
Total	$600,154,847

The estimate for the legislative department was 10 millions, and for the executive about $200,000.

CHAPTER XLIII

CONGRESS

The president's offices are in his residence, the White House, and the executive departments all have buildings of their own. But when one speaks of the national government his mind pictures at once this building, not because the su-

THE NATIONAL CAPITOL

preme court chamber is here (see page 275), but because it is the seat of **congress** (from Latin *con* and *gradi*, to come together). For while the

legislative, the executive, and the judicial departments are coördinate, the legislative department is much the broadest and the most comprehensive. The confederation thought it could get on with congress alone (see page 350); the English parliament is practically the entire government. Our national system does not go so far as this, but it makes the legislative department by far the most powerful.

Congress is based upon the state legislatures, and hence indirectly upon the English parliament. But its differences from parliament are many.

Congress	*Parliament*
subject to the constitution;	supreme;[1]
power divided with 45 state governments;	power absolute;[2]
acts subject to veto;	no longer so;
cabinet ineligible;	cabinet always members;
senators elected for 6 years;	house of lords hereditary, for life, 560;
presided over by elected vice-president;	presided over by appointed lord-chancellor;
representatives 386;	members of house of commons, 670;
must be residents of their districts;	may reside anywhere;

[1] B i.32, 186. [2] B i.186.

term 2 years;	term 7 years, unless dissolved;
salary $5,000;	no salary;
quorum of senate a majority;	of house of lords, 3;
quorum of house a majority;	of house of commons, 40;
each house determines election of its own members.	referred to courts of law;[1]

Congress differs from the legislature mainly in the following particulars:

Congress	*Legislature*
has only delegated powers;	has all powers not specifically denied;
two houses elected on different bases;	elected on the same basis;
appropriation bills must originate in house of representatives;	may originate in either house;
entire bill must be vetoed if any;	specific items in appropriation bills may be vetoed;
to pass over veto requires $\frac{2}{3}$ of those voting;	requires $\frac{2}{3}$ of all members elected;
yea and nay vote required;	manner of voting not specified;
salary $5,000;	salary $1,500;

[1] B i.186.

house	*assembly*
386 members;	150 members;
must be 25 years old;	no requirement;
7 years a citizen;	no requirement;
an inhabitant of the state;	no requirement;
newly elected house serves after a year;	serves at next session;
senate	*senate*
90 members;	50 members;
elected by states;	elected by popular vote;
term 6 years;	term 2 years;
change of $\frac{1}{3}$ every 2 years;	complete change every 2 years;
must be 30 years old;	no requirement;
9 years a citizen;	no requirement;
no such restriction;	members of city governments ineligible;
meets 1st Monday in December;	meets 1st Wednesday in January;
appoints its own committees;	lt. gov. appoints committees;
in impeachment acts alone.	is associated with court of appeals.

For difference in powers, see chapter XXXIV.

Congress meets every year on the 1st Monday in December (16). The congress which met for the first time Dec. 2, 1901, is the 57th congress.

Since the 1st congress met in 1787, the ordinal member of any congress may be found by subtracting 1787 from the odd year in which it meets, and dividing by 2. Thus, $\frac{1901-1787}{2} = 57$. On the other hand, the year of the first session of each congress may be found by adding twice the ordinal number to 1787. Thus, $(57 \times 2) + 1787 = 1901$.

The first session, opening in the odd year, is unlimited, and hence is called the **long session.** The 2d session, opening in the even year, must close at midnight of the next March 3, when a new congress comes into power. Hence it is called the **short session.**

As a matter of fact congress adjourns on the noon of March 4, and often turns back the hands of the clock, so that the real adjournment is still later. But all laws signed after midnight of March 3 are dated March 3.

As to **membership,** each house is the judge of the elections, returns, and qualifications of its own members (**17, 150**).

Parliament exercised this power till 1867, when it was transferred to the common law judges.

Congress has the further power to alter the regulations for election of senators and representatives except as to the place of choosing senators (**15, 149**).

Each house may not only refuse to admit duly elected members whose character unfits them, but it may punish admitted members for disorderly behavior, and by a vote of $\frac{2}{3}$ expel a member (**18, 150**).

This power has always been exercised by the house of commons. The United States senate expelled Blount of Tennesee in 1797; and Bright of Indiana in 1863, the latter for writing a letter addressed to Jefferson Davis as "president of the confederation of states".

The supreme court has also decided that congress has power to punish for contempt.

A **quorum** is constituted by a majority of either house (**17, 150**), but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members.

By a rule of the house, the speaker and 15 members may compel attendance.

In the house of commons of nearly 700 members 40 constitute a quorum. To pass a bill Ohio and Illinois require a majority of all members elected. For New York requirements see page 237.

The house of representatives has, by the apportionment of 1901, 386 members. It takes 194 to make a quorum, and if just this number were present, it would require 98 to pass a bill. Under the rule of the house of commons 21 could

pass it, while under the Ohio rule it would require 194 to pass it.

Until the 51st congress, it had been customary not to count as present members who refrained from voting, thus allowing a man to debate and yet by refusing to vote be "constitutionally absent". Speaker Reed counted all members who were present as part of the house, whether they voted or not, thus often making a quorum which otherwise would have been lacking; and was sustained by the supreme court. This is now the rule.

The **officers** of each house are chosen by its members, except that the vice-president presides in the senate (see page 380).

The most important officers of each house next to the presiding officer, are:

a **clerk** (called in the senate a **secretary,** who officially communicates the proceedings of each house;

a **sergeant-at-arms,** to preserve order;

He has the custody of the **mace**, an ebony reproduction of the Roman *fasces*, the bundle of rods surrounding an axe, carried by the lictors before a chief magistrate, with which criminals were scourged and beheaded. A picture is given on the cover of this book. This in extreme cases he carries into a throng of disorderly members, and he moves it from its place when

the house goes into committee. He is also the treasurer of the house.[1]

a **door-keeper,** who has care of the chamber;

a **postmaster,** who has charge of the mail;

a **chaplain,** who opens each daily session with prayer.

Rules for its own proceedings are made by each house (**18, 150**). These are subject only to the express provisions of the constitution.

In voting the English custom of **division** is sometimes used, where the ayes go to one side of the house and the noes to the other.

A **journal** of its proceedings must be kept by each house (**19, 151**).

This not only preserves a record for future use, but imposes a check upon members, who might otherwise say in the heat of passion what they would not like to have go on record.

At the request of a fifth of those present the yeas and nays must be entered on the journal (19, 178). This is to show constituents how their members voted, but has been used to delay legislation, the process consuming much time.[2]

In the 51st congress the speaker refused to entertain dilatory motions or to recognize members he thought about to make them.

It is provided that the journal may omit such parts of the proceedings as may in the judgment

[1] B i.127. [2] B i.129.

of the house require secrecy (**19, 151**), as for instance in time of insurrection or invasion, when such publication would assist the enemy.

The proceedings of the senate in executive session (see page 475) are kept secret.[1]

Adjournment of either house during a session of congress is forbidden for more than 3 days without consent of the other, or to any other place than that in which the houses are sitting (**20, 151**). When the two houses can not agree as to adjournment the term may be fixed by the president.

An **oath** or affirmation to support the constitution is required of all members (**82, 280**; see page 395).

The **salary** of members of congress is fixed by themselves, and has risen from $6 a day in 1789 to $5,000 a year, besides mileage of 10 cts. a mile each way by the nearest route for each session.

From 1871 to 1874 the salary was $7,500 a year.

It is paid from the national treasury (**24, 146**), instead of by the states from which they are accredited, as under the confederation.

A member may not hold any other **civil office** under the United States; nor may he by resigning take an office created or the emoluments of

[1] B i.101.

which have been increased during the term for which he was elected (**22, 147**; see page 395). Otherwise the members might bargain among themselves to create large-salaried offices to which they could get themselves appointed.

Privileges are granted congressmen of freedom from arrest during or on their way to or from the sessions; and also from punishment for anything said in the house (**21, 152**).

The former is to prevent attempts to control legislative action by keeping members away; the latter to secure freedom in debate. As already seen (see page 433), undue license in debate may be punished by one's fellow-members.

The **process** of law-making in congress is in most respects the same as that in the legislature (see pages 238–243), with these differences:

bills are introduced in both houses by the method of the New York senate, not by that of the assembly (page 238);

bills are referred to a committee in the house before the first reading, and in the senate after the second;[1]

amendments may be proposed at any time, instead of only on second reading (page 239);

bills may be repassed over the president's veto by a $\frac{2}{3}$ majority of those voting, instead of by a $\frac{2}{3}$ vote of all members elected (page 237); but

[1] B i. 153.

a yea and nay vote is required, which is not specified in the legislature.

There is special provision for orders, resolutions, and votes, except to adjourn, which must be presented to the president and pass through the same procedure as in case of bills (25). This is to prevent congress from evading the president's power of veto by putting a bill into some other form.

The president does not have, like the governor (see page 242), power to veto certain parts of an appropriation bill while approving the rest.

The work is even more in the hands of committees than in the legislature (see page 245). The committees are appointed at the opening of the first session of each congress, and sit through both sessions.[1] The senate designates not only the committees but the chairman of each.[2]

The chairman of the ways and means committee of the house is, as in the assembly (see page 247), the leader of the house, and corresponds most nearly with the English chancellor of the exchequer, though without any relation to the secretary of the treasury.[3]

"Some committees, such as those on naval and military affairs, and those on the expenditure of the several departments, deal with administration rather than legislation. They have

[1] B i.153. [2] B i.52. [3] B i.146. 173, 174.

power to summon the officials of the departments before them, and to interrogate them as to their methods and conduct. Authority they have none, for officials are responsible to their chief, the president; but the power of questioning is sufficient to check if not to guide the action of a department, since imperative statutes may follow, and the department, sometimes desiring legislation, and always desiring money, has strong motives for keeping on good terms with those who control legislation and the purse. It is through these committees chiefly that the executive and legislative branches of government touch one another. Yet the contact, although the most important thing in a government, is the thing which the nation least notices, and has the scantiest means of watching."[1]

"After a bill has been debated and amended by the committee it is reported back to the house, and when that committee is called is taken up in its order. One hour is allowed to the member whom his fellow committee-men have appointed to report. He seldom uses the whole of this hour, but allots part of it to other members, opponents as well as friends, and usually concludes by moving the previous question (see page 240). This precludes subsequent amend-

[1] B i.154, 158.

ments and leaves only an hour before the vote is taken."[1]

The speaker recognizes only such members as the committee have selected to speak.

From the fact that the work of congress is so largely done in committees there is, as in the legislature (see page 248), comparatively little scope for oratory in debates[2]. Some find this a matter for congratulation. "It is safe to say that the harm which has been done by laws based on unemotional reasoning is but a drop in the bucket compared with what has been done by laws based on unreasoning emotion."[3]

The law-making **power** of congress is however radically different from that of the legislature, in that it possesses only those powers specifically given to it, while the legislature possesses all powers not specifically denied (see page 336).

The constitution provides (**43**) that congress shall have power to make all laws necessary and proper to carry into execution the powers vested by the constitution in the government, or in any department or officer thereof. Patrick Henry called this "the sweeping clause" by which congress was to overthrow the nation, but Madison said[4] that without this the constitution would have been a dead letter. Chief Justice Marshall

[1] B i.155. [2] B i.141; ii.268; Hadley, pages 93–95.
[3] Hadley, page 55. [4] Federalist, xliv.

says: "A power vested carries with it all those incidental powers which are necessary to its complete and efficient execution;" and Justice Story:[1] "It would be almost impracticable if it were not useless, to enumerate the various instances in which congress, in the progress of the government, has made use of incidental and implied means to execute its powers." It would have been impossible to numerate *affirmatively* all the laws that congress might pass. As it is, more than half of the original constitution is devoted to congress (see pages 342–350).

If only powers specifically enumerated were permitted, congress could not have purchased Louisiana, or annexed Texas or Hawaii, or acquired Porto Rico, or passed the embargo act of 1807, or made grants of lands to agricultural colleges, not to speak of the recent relations this country has assumed toward Cuba and the Philippines.

Chief Justice Chase maintained that congress could not pass a law for payment in greenbacks of debts contracted before they were made legal tender, on the ground that it impaired a contract (51). It also in a sense deprived a person of property (88). Yet such a law was passed because at the time it seemed a necessity (see page 413).

[1] Story, § 1258.

finance

1. to raise money

{ 1. by levying (**26**), p. 413, { *a.* direct taxes, 298, *b.* imposts, 296, *c.* excises, 296, } for { *a.* payment of debts (**26**), 413, *b.* common defence, 339, *c.* general welfare 339; } 2. by borrowing (**27**), 413; }

2. to regulate commerce (**28**), 418,

{ 1. foreign 419, 2. interstate 418, 3. with Indians 421;

3. to regulate state imposts or duties (**52**), 296;
4. to coin money and regulate its value (**30**), 407;
5. to establish weights and measures (**30**), 406;
6. to establish post-offices and post-roads (**32**), 401;
7. to issue patents and copyrights (**33**), 423;
8. to enact uniform bankruptcy laws (**29**), 524;

territory

9. to control District of Columbia (**42**), 360;
10. to dispose of territory (**77**), 355;
11. to admit states into the union (**76**), 359;

elections

12. to make uniform rules for naturalization (**29**), 155;
13. to regulate elections to congress (**15**), 432;
14. to fix the time of choosing presidential electors (**56**), 366;

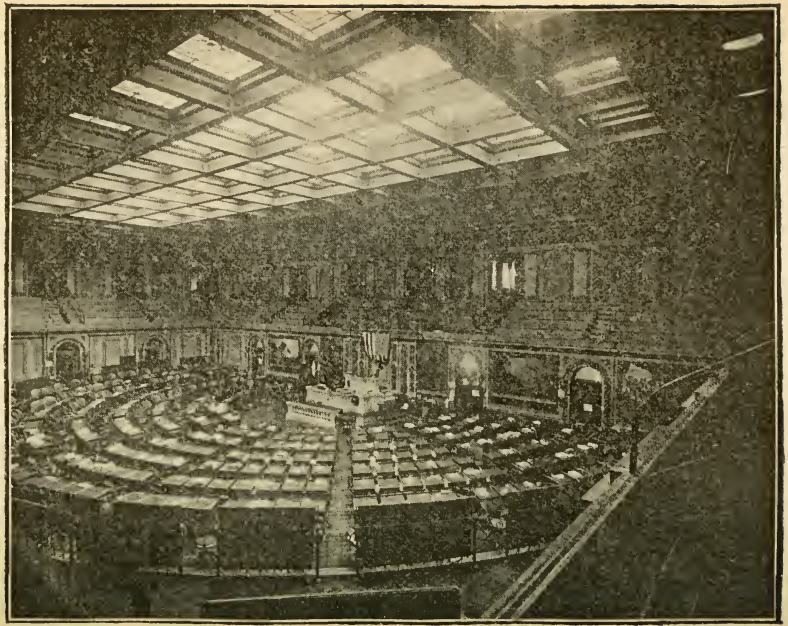
15. to elect a president when electors do not have a majority (**95**), 367;
16. to provide for succession to the president (**58**), 370;
17. to regulate the appointment of inferior officers (**62**), 390;
18. to propose amendments to the constitution (**79**), 339;

war

19. to declare war (**36**), 468;
20. to grant letters of marque (**36**), 399;
21. to make rules regarding captures (**36**), 474;
22. to raise and support armies (**37**), 397;
23. to provide and maintain a navy (**38**), 400;
24. to make rules for army and navy (**39**), 398;
25. to call out militia (**40**), 193;
26. to arm and discipline the militia (**41**), 193;

justice

27. to establish inferior courts (**34**), 278;
28. to provide for appellate jurisdiction (**68**), 275;
29. to prescribe how the acts of a state shall be proved (**72**), 269;
30. to define and punish crimes, 544;
    1. piracies (**35**), 552;
    2. felonies on the high seas (**35**), 552;
    3. international offences (**35**), 552;
    4. counterfeiting (**31**), 553;
31. to declare punishment of treason (**71**), 546;
32. to direct the place of trial for crimes not committed in any state (**69**), 361.



HALL OF THE HOUSE OF REPRESENTATIVES, WASHINGTON

CHAPTER XLIV

THE HOUSE OF REPRESENTATIVES

Representatives are the only officers in the national government elected directly by the people (**3**), and it is by re-electing them or refusing to do so that the people show whether they approve of the action of congress. As they serve for only 2 years this judgment is speedy, and injurious legislation can be soon corrected.

"Senators" are always spoken of under that name, so that the term "congressmen", though properly belonging to both houses, is used only of members of the house, as in England "member of parliament" always means member of the house of commons.[1]

By the articles of confederation delegates from all the states but 2 were chosen by legislatures.

Apportionment of members among the states is made according to the population of the last decennial census, excluding Indians not taxed (**51, 100, 139, 142**).

The present apportionment is given on page 561. The number has varied from 65, in 1789, and from 105 in 1793 on a basis of 1 for every

[1] B i.144.

33,000 inhabitants, to the present number of 386, on the basis of 194,182 inhabitants.

Each state must be allowed at least 1 representative (**5**).

Nevada would otherwise not be entitled to a representative.

The provision adding to the population "$\frac{3}{5}$ of all other persons" referred to slaves, and has been made inoperative by amendments (**98, 99, 100**). Recent legislation in some of the southern states has practically disfranchised most of the negroes, but the apportionment of 1901 did not reduce the representation as required (**100**).

The provision was a concession to the slave-holding states; and as a compensation it was provided that direct taxes should be apportioned in the same way (**51**; see page 298). But as direct taxes were practically never levied, the south was the gainer.

Congressional districts are required by a law of congress passed in 1842.

The party in power at the time the state is divided into districts is tempted so to divide it that as many districts as possible may have a majority of voters belonging to that party. This was so flagrantly done in Massachusetts under Gov. Gerry that the district formed was called a gerrymander, and such unjust division has been called gerrymandering. The map of congres-

sional districts in New York on page 582 shows many irregular outlines, but the object was so to divide up the counties as to make districts nearly equal.

Congressmen-at-large are elected when the new apportionment has given more members to a state, and the new division into districts has not yet been made.

By the apportionment of 1882 New York was allowed an additional congressman; and as the legislature did not redivide the state that year, this member was elected on the general state ticket.

The **qualifications** of a member required by the constitution are that he be 25 years of age, 7 years a citizen of the United States, and an inhabitant of the state from which he is elected (4).

A man may become a member of parliament at 21, but in France and in Holland a man does not become of age till he is 25.

While not required by the national constitution, most state constitutions require residence in the district.[1]

It is not always required in large cities that elect several members. Thus in the 48th congress O. B. Potter and S. S. Cox were elected from districts in New York in which they did not reside.

[1] B i.384.

Residence is not required in England, where a parliamentary district may elect its member from any part of the country. Bryce ascribes to this provision in America much of the low level of statesmanship in the house, and especially the lack of effective leadership.[1] He says:[2]

"The mischief is two-fold. Inferior men are returned, because there are many parts of the country which do not grow statesmen; where nobody, or at any rate nobody desiring to enter congress, is to be found above a moderate level of political capacity. And men of marked ability and zeal are prevented from forcing their way in. Such men are produced chiefly in the great cities of the older states. There is not room enough there for nearly all of them, but no other doors to congress are open. Boston, New York, Philadelphia, Baltimore, could furnish six or eight times as many good members as there are seats in these cities. As such men cannot enter from their place of residence, they do not enter at all, and the nation is deprived of the benefit of their service. Careers are moreover interrupted. A promising politician may lose his seat in his own district through some fluctuation of opinion, or perhaps because he has offended the local wire-pullers by too much independence. Since he cannot find a seat elsewhere, as would

[1] B i.141, 148, 182, 514; ii.67. [2] i.190, 463.

happen in England, he is stranded; his political life is closed, while other young men inclined to independence take warning from his fate.

"The fact is, that the Americans have ignored in all their legislative as in many of their administrative arrangements, the differences of capacity between man and man. They underrate the difficulties of government, and overrate the capacities of the men of common sense."

Another disadvantage is that the member, being elected for the district of which he is resident feels himself bound to make its interests paramount;[1] to secure the local legislation he wants he is forced to resort to log rolling (see page 250).

Hadley says (page 79): "Under the current system of political ethics there is in fact a direct antagonism between the theory of economics and the practical working of representative government. The economist shows how largely the independent action of the parts may be made to conduce to the collective good of the whole. The practical working of representative government, making each member primarily responsible to his district—or one might better say to the members of his own party in his district—means that the collective action of the whole is made a tool to subserve the separate wants of the parts, even though the satisfaction of those wants may

[1] B i. 187, 521..

antagonize the general interest of the nation. The history of every tariff bill, and of every river and harbor bill affords illustrations of this tendency of our representative system. The economist is at a disadvantage, in influencing members of the legislature, because his ends are different from theirs. He is trying to pursue collective interests; they are trying—and under the existing condition of things, necessarily trying—to balance, to compromise, or in some fashion to reconcile divergent ones."[1]

The **election** of members is by vote of those who have the qualifications necessary for the most numerous branch of the state legislature (**3, 139**).

Vacancies are filled for the remainder of the term at special elections ordered by the governor (**6**).

The **speaker** is the only officer chosen from the members. The salary is $8,000.

The English house of commons chooses its speaker, but the approval of the king is required.

The **clerk** is usually chosen from ex-members. Owing to delay in choosing the speaker, the clerk presided Dec. 3, 1855 to Feb. 2, 1856, and 9 weeks in 1859–60.

Only one member from New York has been appointed speaker, John W. Taylor, who served 1820–21, and 1825–27.

[1] See also page 144.

In rank the speaker stands next to the president, and on a level with the justices of the supreme court. Bryce (i. 136, 137) is doubtful if he should not be called the first political figure in the nation, with an influence in ordinary times superior to the president's.

He differs from the speaker of the house of commons in that he is a party leader, and does not aim at the impartiality that characterizes the English speaker.[1] Compare page 246.

The **committees** are appointed by the speaker; and as the control of legislation in congress or in the legislature is in the hands of these committees (see page 245), it is manifest that his power is enormous.

In **debate** the speaker is all-powerful. He may recognize whom he chooses of those who rise to speak; he can advance or postpone bills in a way to determine their fate (see page 440).[2]

In general the house is coördinate with the senate in legislation, but it has three **exclusive powers:**

1. to originate bills for raising **revenue** (23);[3]

2. to originate **impeachments** (7, 13, 14, 65; see page 230);

3. to elect a **president** of the United States when the electors fail to do so (95; see page 367).

This power was exercised in 1801 and in 1825.[4]

[1] B i. 134, 135. [2] B i. 135. [3] B i. 99, 175. [4] B i. 126.

NATIONAL SENATE CHAMBER, WASHINGTON

CHAPTER XLV

THE UNITED STATES SENATE

The constitution of the senate records the most remarkable of the many compromises that were necessary to the formation of the constitution, in providing that every state, large and small alike, shall be represented by 2 senators.

By the census of 1900 Nevada has a population of 42,335 and New York of more than 7 millions; yet each has equal representation in the senate. This extends to more than law-making. The senate confirms appointments and ratifies treaties; it gives every state 2 members of the electoral college; it may as in 1837 elect a vice-president, while the election of president if by the house of representatives is by states, with an equal vote for every state.[1]

The **purposes** for which the senate was created, are thus set forth, by Alexander Hamilton,[2]

1. To conciliate the spirit of independence in the several states, by giving each, however small, equal representation with every other, however large, in one branch of the national government.

[1] B i.120, 182. [2] Federalist, lxvi; B i.108.

2. To create a council qualified, by the moderate size and the experience of its members, to advise and check the president in the exercise of his powers of appointing to office and concluding treaties.

3. To restrain the impetuosity and fickleness of the popular house, and so guard against the effects of gusts of passion or sudden changes of opinion in the people.

4. To provide a body of men whose greater experience, longer term of membership, and comparative independence of popular election, would make them an element of stability in the government of the nation, enabling it to maintain its character in the eyes of foreign states, and to preserve a continuity of policy at home and abroad.

5. To establish a court proper for the trial of impeachments, a remedy deemed necessary to prevent abuse of power by the executive.

The phrase "comparative independence of popular election" shows how important it seemed to have this second house of the legislature elected in such a way as to give it a character distinct from the other. The English house of lords is hereditary; the Italian senate is composed of persons nominated by the king; France appoints her senators by indirect election; the Prussian house of lords is partly nominated,

partly hereditary, partly official, partly elective.[1]

The convention decided to distinguish between the two bodies by making the members of the senate (1) fewer, (2) elected by the state legislatures instead of by the people, (3) for 6 years instead of 2, and (4) with a requirement of 30 years of age instead of 25, and 9 years a citizen of the United States instead of 7 (**10**).

The **number** of senators is limited by the number of states, and is not likely to exceed 100, while the English house of lords numbers about 560, the Russian 432, and the French senate 300.[2] It is provided that the terms of only $\frac{1}{3}$ of the senators expire each two years (**9**), so that there is comparative permanence. The house might be entirely changed by a single election, but to make an entirely new senate would require 3 elections.[3]

Thomas H. Benton was a senator 30 years, and John Sherman 32 years.

The method of **election** was fixed by congress in 1866, providing that when a senator is to be chosen each house of the legislature shall first vote separately on the 2d Tuesday after organization or after notice of vacancy has been received; on the next day they meet together and if the choice of the houses shall prove to be the same the person shall be declared elected; if it does not prove to be the same, both houses shall pro-

[1] B i.94. [2] B i.93. [3] B i.462.

ceed to a joint vote, a majority of each house being present.[1] If no person receives a majority, the joint assembly must meet and cast at least one vote a day during the entire session.

If vacancies happen during a recess of the legislature the governor appoints a senator to serve until the next meeting of the legislature (9). But if the vacancy exists through inability or refusal of the legislature to elect, the appointee of the governor will not be recognized by the senate, as it is not believed that the constitution gives such power to the governor.

For the first few months of the 1st congress New York had no senators, through disagreement of the houses of the legislature.

The **presiding officer** is the vice-president, and his power is much more limited than that of the speaker of the house. He has no vote, except in case of equal division; the standing committees are chosen by the senate; and his authority in questions of order is limited, the decision being held to belong to the senate itself.[2]

The senate elects a president *pro tempore* who presides in the absence of the vice-president, and if the office of vice-president becomes vacant receives the same salary as the vice-president. Of course he does not become vice-president, for

[1] B i.95. [2] B i.93.

no officer of the United States can be a member of either house of congress (22).

In the English house of lords the presiding officer is the lord chancellor, or some other officer appointed by the crown.

The **executive** powers of the senate were considered by the framers of the constitution exceedingly important, as we having already seen in the quotation from Hamilton (see page 453). In advising and checking the president in the matter of appointments and treaties, it has proved so powerful that Bryce thinks the evils almost commensurate with the benefits.[1] He says:

"Hamilton went so far as to speak of the national executive authority as divided between two branches, the president and the senate. These executive functions are two, the power of approving treaties, and that of confirming nominations to office submitted by the president."[2]

"The senate may appear in some points to resemble the English privy council of the seventeenth century, because it advises the executive; but there is all the differences in the world between being advised by those whom you have yourself chosen and those whom election by others forces upon you. So it happens that the relations of the senate and the president are sel-

[1] B i.102, 106, 109, 120. [2] B i.102.

dom cordial, much less confidential, even when he and the majority of the senate belong to the same party, because the senate and the president are rival powers jealous of one another."[1] "No European state, no British colony, entrusts to an elective assembly that direct participation in executive business which the senate enjoys."[2]

In the case of **treaties** (see page 474) the house sometimes has considerable power through its control over appropriations. When Louisiana, Florida, and California were purchased, the presidents were careful to make sure beforehand that the house would appropriate the necessary money; in the purchase of Alaska, however, the house was not consulted. Congress authorized the admission of Texas either by treaty or upon the acceptance of certain terms specified, and it was admitted upon accepting those terms—that is without exercise of the treaty-making power. Hawaii was annexed by joint resolution of congress, but Porto Rico and the Philippines were secured by treaty.

The **judicial** power of the senate, like that of the New York senate, consists in its trial of cases of **impeachment** (see page 230); but it has greater power, not being associated with the supreme court, except that when the president

[1] B i.91. [2] B i.110.

is under impeachment the chief-justice presides (13).

Had Andrew Johnson been convicted, the president *pro tem* of the senate would have become president, yet he insisted on voting (see pages 230, 231).

Otherwise the provisions are the same as in New York (14, 218), the house of representatives making the impeachment (7). The president may not pardon those convicted by impeachment (61).

The constitution reads, "The president, vice-president, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other higher crimes or misdemeanors" (65).

The question has arisen whether congressmen are civil officers, and thus liable to impeachment; but by civil office the constitution seems (22) to mean an office not military which congress has the power to create; the president is said (64) to commission all the officers of the United States, and he certainly does not commission congressmen. So though the first case of impeachment was brought against Senator Blount in 1797, and he was expelled from the senate (18), it was then decided that he could not be impeached (see page 433).

There have been 6 other cases of impeach-

ment, 4 against judges, 1 against a cabinet officer, and 1 against President Andrew Johnson. Only 2 secured conviction—both against judges, one for drunkenness, and one for aiding the rebellion.

Bryce says[1] impeachment is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy is unfit for ordinary use. It is like a hundred-ton gun, which needs complex machinery to bring it into position, an enormous charge of powder to fire with, and a large mark to aim at. It is however the only means by which a federal judge can be got rid of.

The **legislative** powers of the senate are coördinate with those of the house, except that it may not originate bills for raising revenue (**23**).

This is a traditional distinction, the English house of commons having zealously guarded this prerogative.[2] There is a reason for it in congress, the members of the senate not representing equal numbers of citizens.[3] In New York where senate and assembly are equally representative, no distinction is needed or made (**153**).

Bryce thinks the senate performs well its duty restrain the impetuosity and fickleness of the "to popular house" (see page 454).[4]

[1] i.208, 106. [2] B i.171. [3] B i.468. [4] B i.110, 120.

UNITED STATES SENATORS FROM NEW YORK.

	ELECTED.		ELECTED.
Philip Schuyler	1789	Rufus King	1789
Aaron Burr	*1791	Rufus King	*1795
Philip Schuyler	*1797	John Lawrence	1796
John S. Hobart	1798	John Armstrong	*1801
Wm. North	1798	De Witt Clinton	1802
James Watson	1798	John Armstrong	1803
Gouverneur Morris	1800	John Smith	1804
Theodorus Bailey	*1803	John Smith	*1807
Samuel Mitchell	1804	Rufus King	*1813
Obadiah German	*1809	Rufus King	*1819
Nathan Sanford	*1815	Nathan Sanford	*1825
Martin Van Buren	*1821	Wm. L. Marcy	*1831
Martin Van Buren	*1827	Silas Wright, Jr	1833
Charles E. Dudley	1829	Silas Wright, Jr	*1837
Nathaniel P. Tallmadge	*1833	Silas Wright, Jr	*1843
Nathaniel P. Tallmadge	*1839	Henry Foster	1844
Daniel S. Dickinson	*1845	John A. Dix	1845
Hamilton Fish	*1851	Wm. H. Seward	*1849
Preston King	*1857	Wm. H. Seward	*1855
Edwin D. Morgan	*1863	Ira Harris	*1861
Reuben E. Fenton	*1869	Roscoe Conkling	*1867
Francis Kernan	*1875	Roscoe Conkling	*1873
Thomas C. Platt	*1881	Roscoe Conkling	*1879
Warner Miller	1881	Elbridge G. Lapham	1881
Frank Hiscock	*1887	Wm. M. Evarts	*1885
Edward Murphy	*1893	David B. Hill	*1891
Thomas C. Platt	1897	Chauncey Depew	1899

*Stars indicate the close and commencement of full terms after expiration of a first term. Names between the stars are of senators appointed or resigned or elected to fill vacancies.

CHAPTER XLVI

INTERNATIONAL LAW

We have seen that New York is a sovereign state, except so far as it united with the other states in conferring certain powers upon the national government; and that the United States is a sovereign state, so far as pertains to the powers entrusted to it, having no superior.

We come now to relations that are comparatively indefinite. The boundary of power between New York and the United States is defined by the national constitution, and the power of each within its limits is absolute; each may make laws and compel obedience.

But the relations of the United States with foreign countries are defined only by treaties, and these are with individual nations—never international. International law is not, like other law, the expression of a controlling will (see page 252). There is no international constitution, there is no international legislature, there is no international executive, there is no international judiciary. If the laws of one nation are violated by another, it can often obtain redress only by declaring war (see page 469).

There has been much effort to establish **arbitration** (see page 256), but the conference of nations at the Hague in 1899 was followed by wars of England with South Africa and of the United States with the Philippine insurgents.

Yet there is considerable basis and force to international law, and though it is comparatively of modern origin its foothold is secure. To the Greeks all foreigners were "barbarians". The spirit of the day is to extend the brotherhood of man to the brotherhood of nations, and to recognize that our own security and prosperity are largely dependent upon the security and prosperity of the other nations of the world, and upon free and friendly intercourse with them.

International law, or the law of nations, "is the system of rules regulating this intercourse between nations and their respective subjects, as acknowledged by the civilized states of the world."

Thus it is agreed generally among nations, and between each and most of the rest by treaties, that each government shall **recognize** the established government of the others. When there is a government *de jure* (according to law) and another government *de facto* (according to fact), the latter, if actually in power, must be recogniged; otherwise there would be continual war.

This recognition of another country is shown

by the appointment of a representative to reside at the capitol of that country. In case of the larger countries, this representative is known as an **ambassador** (from Latin *ambactus*, vassal); in case of the others he is known as a **minister** Latin, a servant).

Hence the receiving of ambassadors, which is left to the president (64), is sometimes a matter of delicate diplomacy. During the civil war, had Great Britain received the representatives of the confederacy, the United States might have recalled its minister, and war with Great Britain might have resulted. Sometimes too the reception of a minister is refused for personal reasons, on the ground that he is *persona non grata* (Latin, an unsatisfactory person).

Sometimes an **ambassador extraordinary** is appointed to serve in regard to particular business and to return when this is accomplished; he is sometimes called an **envoy** (from Latin *via*, way); and if he has full power to act for his government, he is an envoy or minister **plenipotentiary** (Latin *plenus*, full, and *potens*, powerful), with full power.

Such a representative, his staff and his family, are not subject to the laws of the country in which they reside, or through which they pass in going and returning. They cannot be proceeded against in the courts of other countries,

and are responsible only to the laws of their own country after their return. These privileges are granted not only to show respect to the representatives of a foreign nation, but to prevent interruption in the discharge of their duties. Compare the privileges of legislators (see page 223) and congressmen (see page 437). In America the supreme court has original jurisdiction in all cases concerning ambassadors and ministers (68).

To very small states, or temporarily to supply vancies in larger states, a **chargé d'affaires** (French, charged with business) is sent.

A list of the principal ambassadors and ministers with their salaries will be found on page 590.

The officers just named belong to the **diplomatic** service. There is also a **consular** service, with many more officials. **Consuls** (from Latin *consulere* to consult) are commercial representatives of the government residing in the principal foreign ports and cities. Their especial duty is to look after American shipping. They are legal guardians of the rights of American seamen, and if they find a sailor destitute must furnish him relief at the expense of the government. But they also protect the commercial rights of our citizens, draw up legal documents for them, and settle the estates of Americans

deceased within their districts when not otherwise provided for.

It is also the duty of the consular as it is of the diplomatic service to collect and forward to Washington such information as may be of service to the American government or people. Many published consular reports deal with commercial, agricultural, or manufacturing statistics, meant to be of use to Americans.

This gathering of information is especially important as regards diplomatic relations. During the civil war the consul at Liverpool informed the secretary of state that a ship, the Alabama, was building there to serve as a confederate cruiser. The secretary of state requested the British government to prevent the vessel from going to sea, and when it escaped from the harbor, informed the British government that it would be held responsible for all damage inflicted by the vessel upon American shipping. The matter was referred to arbitration, and the British government paid to the United States $15\frac{1}{2}$ millions as a settlement of the Alabama claims.

In the larger foreign cities, the consul is known as a **consul-general**, and the office is very lucrative. Sometimes the consul-general is also the minister resident.

Consuls are subject to the laws of the country where they reside.

All those diplomatic and consular officers are appointed by the president with consent of the senate, and before they can enter upon their duties must present a certificate of appointment and be acknowledged by the government of the country to which they are accredited.

It is agreed that the **jurisdiction** of each country shall extend over all its territory, including its rivers and harbors, and 3 nautical miles (about 3½ English miles) into the ocean, the rest of the ocean being free to all.

Intercourse between the citizens of one nation and those of another depends upon treaty. A country may prohibit immigration or emigration; it may forbid imports or exports, or levy such duties as to make them impossible. Thus the Chinese have few rights in the United States (see pages 157, 161).

The present laws of the United States exclude convicts, insane persons, paupers, polygamists, and persons having contagious diseases. The Chinese, and laborers under contract or agreement to perform labor or service in the United States are also excluded, except in the case of persons engaged in the professions, and skilled laborers employed in the establishment of new industries. These last are excluded as likely to lower by competition the price of labor.

Extradition (see page 554) is also a matter of

treaty, but such treaties exist between the United States and most civilized foreign countries.

When difficulties arise between two countries, there are recognized measures of hostility that fall short of actual war, such as **letters of marque and reprisal** (see page 399).

Sometimes a country lays upon foreign vessels within its ports an **embargo** (from Spanish *embargar*, to restrain), either to protect them, when it is called a civil embargo; or as a sort of reprisal, when it is called a hostile embargo. Though allowed by international law, embargo is seldom used save as a measure of war.

When war has been determined upon against a nation it must be **declared.** It is no longer necessary to send a messenger to the opposing government, as the means of information are abundant; to withdraw and ambassador is sufficient notice.

To **declare war** a country should have just cause, and a definite and legitimate object. Of this the war-making country is usually the only judge, but some times other nations unite with it. If there has been treaty of **alliance** (from Latin *ad*, and *ligare*, to bind), the other country may still exercise its own discretion as to being drawn into a war in which it was not an original party; no treaty can bind a nation to enter upon an unjust war.

Congress alone has the power to declare war (**36**). In monarchies this power is exercised by the sovereign, but here it is retained by the sovereign people. Of the 3 methods of settling disputes between nations, by negotiation, by arbitration, and by war, the last is still often necessary. Whether it is necessary the people judge through their representatives.

In the case of the **civil war** no act of congress declared war, as war is an armed conflict between nations. The act passed in 1861 was "to authorize the employment of volunteers to aid in enforcing the laws and protecting public property". In 1898 congress enacted "that war be and the same is hereby declared to exist between the United States and Spain."

Upon the declaration of war all intercourse ceases, and all commerce between citizens is forbidden. On the other hand, hostilities between individuals of one country and those of the other are forbidden, the war being between governments, not between persons. If war were declared between Great Britain and the United States, a citizen of New York who should rob or murder a Canadian would be a plain robber or murderer, with none of the rights of a soldier. Citizens of the hostile nation within the country are allowed to remain, unless by proclamation they are required to depart within a given time.

Residents of the two nations who take no part in the war are **non-combatants,** and are secure in person and property, unless the latter is necessary for the uses of the army, in which case it is usually liberally paid for.

The rights of non-combatants at sea used to be more restricted. On the ground that it was necessary in war to weaken the naval power of the enemy, it was customary to capture and destroy private vessels belonging to the subjects of the hostile nation. The modern tendency is against this.

Of course vessels of a neutral nation (see page 472) must be respected. When in 1861 the United States stopped the Trent, an English vessel, and took from it two confederate ambassadors, war with England might have resulted had not the government surrendered them.

The property of **belligerents** (from Latin *bellum*, war, and *gerere*, to wage) may be **confiscated** (from Latin *fiscus* a purse); during the civil war Gen. Butler solved a temporary difficulty by declaring the negroes who came to him **contraband** (see page 472).

When an enemy's force **surrenders** (from Latin *re* and *dare* to give back), the men captured are known as **prisoners of war,** and must not be killed unless found to be **deserters** or **spies,** in which case they may be shot. Prisoners may

be confined, and in extreme cases fettered, but only so far as circumstances make it necessary to prevent their escape.

If war is declared between two countries there are still many recognized requirements of international law.

When war is declared, the nation taking the offensive usually claims that it does so to seek redress for some injury for which it has in vain sought other satisfaction (see the Declaration of independence, page 591). As we have seen (page 462) there is no other penalty provided for the violation of international law.

By agreement among the nations of Europe, it has been held for more than 2 centuries that a state may interfere with the political policy of another whenever it finds its own security endangered, in order to preserve the **balance of power,** "such a disposition of things as that no one potentate or state shall be able absolutely to predominate and prescribe laws to the others."[1]

Thus the Crimean war of 1854 was undertaken by England and France for no other object than to maintain the balance of power in eastern Europe, and to prevent the aggrandizement of Russia by the dismemberment of the Ottoman empire.[2]

The United States claims a similar right to

[1] Vattel. [2] Enc. Brit. iii. 267.

interfere under what is called the **Monroe doctrine,** first stated by President Monroe in his message for 1823, "that the American continents, by the free and independent condition which they have assumed and maintain, are henceforth not to be considered as subjects for future colonization by any European powers"; and that any attempt of European powers to colonize any portion of this hemisphere would be considered dangerous to our peace and safety. This doctrine has been frequently maintained in relation to proposed European interference in Panama, Mexico, Venezuela, etc., and has in 1901 been recognized in the treaty between Great Britain and the United States as to an inter-oceanic canal.

When war has been declared between two nations, each has a right to expect other nations to remain **neutral** (from Latin *neuter*, neither). If it is a civil war and one party has obtained unquestioned control of the government, it may demand **recognition** from other governments (see page 463).

A neutral nation has no right to supply to either belligerent such articles (usually the list is agreed upon) as assist it in carrying on the war; these are called **contraband** (from Italian *contra*, against, and *bando*, proclamation). To prevent their delivery to the enemy each of the hostile nations has the **right of search** over neutral pri-

vate vessels. A neutral may not allow troops to be enlisted or privateers to be built within its borders (see page 466), or carry on any trade with either nation likely to help it carry on the war.

A neutral nation has corresponding rights. It may for instance forbid the transportation of troops across its territory.

Each nation also has the right to declare a **blockade** (from Old English *blok*, now block), or closing of the enemy's ports, and may seize and confiscate any vessels that try to enter. But the blockade must be effectively maintained, by sufficient force to make it dangerous to enter; otherwise it would be a "paper blockade" and of no effect.

When a fortified town resists an army, it is often attacked by **siege** (from Latin *sedere*, to sit), investing it by an army so as to prevent egress and ingress, and gradually approaching it by fortifications till it is forced to surrender.

Armed private vessels commissioned by the government are known as **privateers** (see page 399), and may capture vessels belonging to the enemy, the owner and crew keeping the property (compare letters of marque, page 399). During the civil war, congress authorized letters of marque (51), but none were issued. The Alabama (see page 466) was a confederate privateer.

To compensate for the additional danger of naval battles, the property captured becomes the property of the naval forces taking it, and its value is divided among the officers and men as **prize money.**

Hostilities may be temporarily suspended by a **truce** (from Old English *treuwe*, truth), during which actual hostilities cease.

When war has been declared, peace can come only through the negotiations of ambassadors representing the two nations, and the **treaty of peace** agreed upon must be accepted by the president and senate before terminating the war.

A **treaty** (from Latin *tractatus* handling) is an agreement between two or more nations upon specified topics, formally signed by commissioners properly authorized, and ratified by the supreme power of each state. Besides conditions of peace at the conclusion of a war, treaties may provide for adjustment of boundaries, cession of territory by purchase or otherwise; extradition of criminals (see page 554), **reciprocity** (from Latin *reciprocus*, alternate) in trade as regards duties upon imports, etc.; and many more matters, such as postal rates, patents, and copyrights. In the United States all dealing with foreign nations is reserved to the national government (**51**). The initiative is with the president, through the secretary of state (see

page 396); but all treaties must be ratified by the senate (62),[1] which always considers them in secret or executive session (see page 436) where a vote is required. Something of strength and celerity in diplomacy is lost by thus conferring the treaty-making power upon a large body of men.[2] If changes in the treaty are made by the senate, the entire treaty must be submitted anew to the president and to the government with which negotiations are pending.

Our most important treaties have been with

England (1783, 1794, 1814, 1842, 1846, 1850, 1901);

France (1800, 1803); Spain (1783, 1819, 1898);
Tripoli (1805); Mexico (1848);
Algiers (1815); Russia (1867).

By the treaty of 1898, Spain ceded control of Cuba, Porto Rico, the Philippines, and other islands, and received 20 millions for its improvements in the Philippines.

By the treaty of 1901 England waived any objections that might arise out of the treaty of 1850 to the construction of a ship canal between the Atlantic and Pacific under the auspices of the United States, and guarded by the United States with such military police as may be necessary to protect it against lawlessness and disorder. The canal is to be under the same rules of neutralization as the Suez canal.

[1] B i.103, 221. [2] Hadley, page 22.

CHAPTER XLVII

PRINCIPLES OF GOVERNMENT

We have considered the various forms in which government is exercised in the United States, and it is well now to consider what government is, and what is the source of its authority.

Government (see page 15) is control. It is the instrument which society uses to secure liberty and justice. It is the power which makes, construes, and executes the laws. Gladstone says: "It is the function of government to make it easy to do right and hard to do wrong."

The word government is used both of the system of government, as when we say the government of America is based on the constitution; and of the officers who administer it, as when we say the government has concluded a treaty with Spain.

There are many theories of the origin of government. Plato saw in the government of the state only the development of the government of the household. Aristotle thought the state prior to the individual, in the sense that it is the true object of the social instinct implanted in

man, and only required legislative skill to bring it to perfection. Hobbes held that mankind were driven by fear to enter into a solemn compact by which they renounced their freedom and gave absolute obedience to "Leviathan", the state. Locke, Rousseau, and others, looked upon government as a social contract. Some hold that the state is founded to obtain the greatest happiness of the greatest number; some prefer to say it is intended to fulfil the highest aspirations of humanity. Fairbanks says: "It is evident that forms of activity which demand the final power of the whole society for their realization, or, again, which require general rules absolutely enforced on all classes alike, come within the proper sphere of the state. On the other hand an almost universal experience has shown that where freedom of initiative is required, political machinery is likely to stand in the way of success."[1]

The control possessed by government came originally from force. In rude times the man who excelled in strength, in courage, or in sagacity became the leader; sometimes because he usurped authority, sometimes because he protected his companions in danger, and they learned to depend on him. Thus **monarchy** (from Greek *monos*, sole, and *archos*, chief), grew up, a gov-

[1] Introduction to Sociology, 3d ed., page 195.

ernment where the authority is vested in one person. The sovereign often managed so that his children would succeed to his power, and thus monarchy became **hereditary** (from Latin *heres*, heir).

The earliest form of monarchy was **patriarchal** (from Greek *pater*, father, and *archos*, leader), where the father was the head of his family, which, if the father had reached old age, might with children and grand-children form a considerable body. This developed into the **clan** and the **tribe** (see page 22), which were larger families, with broader relationships.

The Hebrews had a particular form of patriarchal and tribal government, called a **theocracy** (from Greek *theos*, good, and *kratein*, to rule), following religious leaders whom they believed to commune directly with God, and laws that they believed to be handed down from Heaven on Mount Sinai.

The tribe in turn developed into the **city** of the Greeks and Romans, which furnished besides defence an administration of justice, and some direction of the common life of its members.

Another form of monarchy was **feudal** (see page 147). In this the functions of the state included besides defence and administration of justice considerable direction of private affairs, especially as regarded economic production and

distribution. In theory the state was concentrated in the king.

Nobles owed their allegiance to him personally; they received their lands from him, to distribute among subordinates.

Absolute monarchy is a government in which there is no law-making power except the sovereign, and his laws are interpreted and executed by officers responsible only to him. The words **despot** and **tyrant** originally meant only single ruler; that they have reached their present meaning shows the tendency of this sort of government. Montesquieu distinguished despotic from monarchic government in that in the former one man controls everything by his will and caprice, while in the latter he follows fixed and established laws.

If the monarch were the wisest and best man, this would be in many ways a desirable form of government; but it would not educate the people to govern themselves, and would leave the people helpless when a weak or wicked king succeeded to the throne.

Among primitive peoples it is the only form possible. At the present time, though nations like Russia are nominally so, there is really among important nations no absolute monarchy. Even in Turkey and in China there are customs that the monarch does not dare disregard. If

he is too autocratic, he may be dethroned by the people or by an usurper.

In a **limited monarchy** the hereditary executive acknowledges laws made by a legislative body chosen by the people. The power of this legislative body may become in itself absolute and the monarchy only nominal, as in England (see page 429).

Sometimes instead of the power falling into the hands of one man it has been held collectively by a small group of men who have assumed power; it is then called an **oligarchy** (from Greek *oligos*, few, and *archein* to rule). In Venice a ring of rich merchants controlled the city.

Sometimes there has been an attempt on the part of the people to choose a group of men to whom to entrust the government, which is then called an **aristocracy** (from Greek *aristos*, best, and *kratein*, to govern). Feudalism was the parent of aristocracy.

Oftener the heads of certain great families have contrived, to get the power and keep it in their hands, and transmit it to their descendants. Those holding titles because belonging to aristocratic families are called **nobles** (from Latin *noscere*, to know, something well known), and in every generation men are created nobles to reward distinguished service, or, in some countries, even for a price.

In civilized countries it is no longer possible that the exclusive power of making laws should be given to persons on account of their birth.[1]

"We hold these truths to be self-evident, that all men are created free and *equal*" (see page 591).

In a pure **democracy** (from Greek *demos*, the people, and *kratein* to govern) the entire body of people meet and make the laws and elect their officers directly. This is possible only in a small community (see page 62).

A **republic** (from Latin *res* affairs, and *publica*, public), or **commonwealth**, is a representative democracy, where the legislature and the more important officers are elected periodically by the people. It is "a government of the people by the people, for the people" (see pages 26, 62).

Madison said:[2] "We may define a republic to be a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior."

Much depends upon the extent to which the suffrage is granted. Athens was a republic, but only free men and natives could vote, and most of the people were slaves.

"The principle of republicanism is the equal

[1] B ii.230, 296; Hadley, page 21. [2] Federalist, xxxix.

right of the people, the citizens, all the members of the body politic. In theory it is the government of public opinion. * * * The fundamental principles of right and justice for the government, the representative character of the governors, and their practical responsibleness to the governed, are the essentials of republicanism."[1]

Many countries combine two or more of these forms. Thus England has the monarchial principal in the king, the aristocratic principle in the house of lords, and the republican principle in the house of commons. Macaulay calls the Roman emperors republican magistrates named by the senate

"Everyone knows that Aristotle divided governments into monarchy, aristocracy, and democracy. Very few know that Aristotle said that there was a more fundamental division of governments into those which were legitimate and those which were not; the former being based on the consent of the governed and acting in the interest of the whole, while the latter were based on the authority of a class and exercised in the interests of that class."[2]

We have seen (page 28) that except in absolute monarchies there is a division of power into executive, legislative, and judicial departments.

[1] Farrer, page 223. [2] Hadley, pages 139, 25.

We have also seen that the boundaries of these departments are not distinct:

(1) The executive has legislative power in the veto (see pages 373), and judicial power in pardons (see page 374).

(2) The legislative power is executive in confirming appointments (see page 457) and treaties (see page 475). Bryce declares (i.271) that under the English system the legislative and executive functions are interwoven as closely as under absolute monarchies.

It has judicial power in impeachments (see page 458); and has power over the judiciary by impeachment (see page 460), and sometimes by appointment (see page 289). When elections are indecisive it has even the power of the people to choose the executive (see page 367). But while entire separation of the three powers is impossible, the national constitution aims to make it as complete as is practical.

In England the legislative power has become supreme (see page 429).

(3) The judiciary has executive power in some appointments (see pages 74, 284), and in such writs as injunctions (see page 270).

There is a further distinction as to whether a government is **centralized**, as in France, where the national government pays for and controls the schools and the police; or whether as with

us such interests as these are managed by local authority. When local affairs are referred to a central authority, the government is sometimes called a **bureaucracy,** a ruling through officials. There is a fable of a French educational official who took out his watch and said to a caller, "At this instant every 4th-year pupil in France is spelling *gouvernment.*"

Tolman Smith makes a direct antithesis.[1]

In local self-government, control by	*In centralization, control by*
the greatest number of minds;	the smallest number of minds;
knowing the most about the special matter in hand;	knowing the least about the special matter in hand;
having most opportunities to know;	having the fewest opportunities to know;
having most interest in its well-working.	having the smallest interest in its well-working.

The United States offers a remarkable illustration of local self-government by adding to the republican principle of government the **federal** (from Latin *foedus*, treaty) principle—that of compact of states with one another by which they delegate certain powers to their union as a

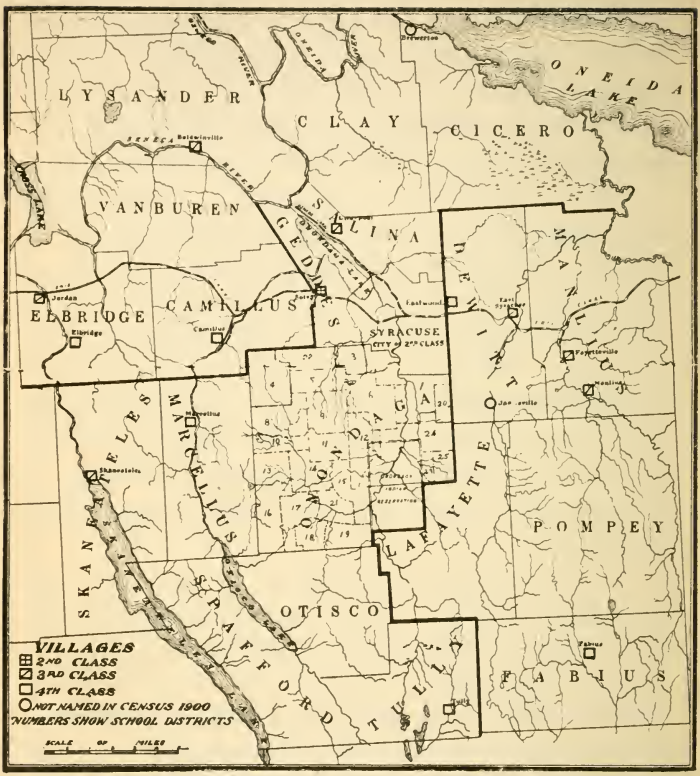
[1] Local Self-Government and Centralization, London, 1851.

whole, and retain only a limited sovereignty. This principle of giving control of matters of general interest to the general government, and leaving to the states control of matters of local interest, prevails throughout our entire system.

Hence our government of towns, counties, villages, and cities is called **local** (from Latin *locus*, a place), restricted to one place. Villages and cities are never formed by the legislature except by request or consent of the inhabitants, so that they are **voluntary** political organizations, chartered expressly so as to take better care of their own interests. But towns and counties are **involuntary** political organizations, established by the board of supervisors by authority of the legislature, chiefly to administer matters of county and state concern within their own localities.

It would be entirely possible to dispense with local government. As we have seen (page 337), the national government appoints from Washington every officer who performs its functions. But the national government has no authority over most of the matters with which local government is most concerned; it does not interfere with schools or elections or taxation.

Moreover, as Bryce says (i. 343): "Self-government stimulates the interest of people in the affairs of the neighborhood, sustains local politi-



ONONDAGA COUNTY, 1901

Heavy lines show the three commissioner districts. The city of Syracuse is a separate school district.

cal life, educates the citizen in his daily round of civic duty, teaches him that perpetual vigilance and the sacrifice of his time and labor are the price that must be paid for individual liberty and collective prosperity. Self-government secures the good administration of local affairs by giving the inhabitants of each locality due means of overseeing the conduct of their business."

The map on the opposite page indicates the extent of subdivision in New York. The state itself is only one among 45, and Onondaga is one of the 61 counties of the state. Yet it is divided into 19 towns, and a single one of these towns, Onondaga, is divided into 25 school districts. That last division seems a small unit, $\frac{1}{45 \times 61 \times 19 \times 25} = \frac{1}{1,303,875}$ of the country. Yet the history of District No. 21 for three-quarters of a century as given in The School Bulletin for March, 1901, shows that all these years the people attended every school meeting, discussed the matters that came up, recorded the ayes and noes on every important vote, abode by the decision of the majority, and at a good deal of sacrifice continually maintained what was from period to period a school fully up to the times. That is a record to be proud of, and it is typical of local government in the United States.

All these forms of government, much as as they differ, depend upon a common principle, that men are social beings, that they must live together, and that to live together safely and profitably they must be subject to control. Aristotle said (see also page 476): "Whoever lives voluntarily out of civil society must either have a vicious disposition or be an existence superior to man." Society, then, is a necessity; and equally necessary is a form of government.

Civics has been defined as "the body of knowledge or science which devotes itself to the consideration of citizenship relations, including the reciprocal relations of government and citizenship." Civics seeks properly to coördinate, as parts of an integral science, the essential truths with which the citizen must be familiar in order to make the best use of his powers and privileges. It includes

"**I. Ethics.**—The doctrine of duties in society. In other words, the study and setting forth of the conditions in human character which are essential to the welfare of the citizen, society, and government. As right character is the natural source of right actions, the science of civics first concerns itself with the facts which underlie and account for these essential characteristics of the good citizen.

"**II. Civil polity.**—Governmental methods and

machinery; suffrage, rights and obligations; the qualifications and duties of public officials; executive, legislative and judicial affairs, and all other matters having relation to the orderly and proper administration of government.

"**III. Law.**—The principles and facts of the law in application most directly involving the interest of society, and especially of the citizen and the government.

"**IV. Economics.**—The principles or laws which explain the production, distribution and ownership of that which constitutes, or is technically called, wealth.

"**V. Sociology.**—The science of society in all its relations, and the care of the dependent, defective, and delinquent classes.

"**VI. History.**—Collateral facts illustrative of tendencies and results growing out of given conditions, considered in connection with ethics, civil polity, law, sociology, and eonomics."[1]

In a volume like this we can consider civics only in its narrower sense of civil polity, as defined above.

Woolsey[2] says: "A state is a community of persons living within certain limits of territory, under a permanent organization, which aims to secure the prevalence of justice of self-imposed

[1] Henry Randall Wait, in Political Science News.

[2] International Law

laws." The expressive "prevalence of justice" covers a wide range. It involves defence in war —protection of the people as a whole from incursions and unjust exactions by other nations. It involves security of life, liberty, and property at home. In short it involves an entire defence against inequitable interference with the citizen's "pursuit of happiness".

This defence sometimes seems at first to interfere with liberty and property. A man is not allowed except by express permission to build a wooden house within the "fire-limits" of a city, because a house easily burned would seriously endanger other property. For the same reason a merchant would not be allowed to carry an unlimited stock of gun-powder or of dynamite. Some cities have plumbing inspectors, who compel the owners of houses to put in plumbing that is sanitary.

But the modern state does more than to defend,—it promotes. It does for the community what individuals could not do for themselves. The United States carries letters to the Philippine islands for 2 cts., publishes predictions as to the weather, distributes seeds among farmers, gives land to help build railways, and subsidies to encourage shipping.

New York pays for public schools in its remotest corners, the public money proving all that is

used in many districts and being far more than was spent altogether fifty years ago. It has given bounties to encourage making beet-sugar; and on the other hand it prohibits the sale of uncooked meat on Sunday.[1]

Having done so much for the people, should not the government do more? Why should it not buy all the railways and telegraph lines, and carry people for cost or less?

The doctrine called **laissez-faire** (French, let things alone) objects to all this. It says legislators are not wise enough men to meddle with other people's business to this extent. If the government protects one kind of business it necessarily puts an extra burden on some other kinds. If it prescribes that the laboring-man shall work only 8 hours, it tempts to evasion of the law, and it prevents men from earning as much as they might. "The new democracy is passionately benevolent, and passionately fond of power."[2] "'Virtue,'" says a French writer, '"is more dangerous than vice, because its excesses are not subject to the restraints of conscience.'" There is a great deal of legislation, and a great deal of socialism, to which this remark will apply. Its promoters believe themselves to be actuated by moral ideas, when the chief ground for this belief is the absence of intellectual ones."[3]

[1] 392:1901. [2] Farrer. [3] Hadley, page 56.

CHAPTER XLVII

PERSONAL RIGHTS

We have already spoken of the rights guaranteed to the citizen by the constitutions of New York and of the United States (see pages 136–153), including his legal rights both in civil and in criminal cases.

Some of the further rights given him under the common law and under statute should be considered.

The **security** of the citizen permits a man to defend himself against attack. He may carry arms (85), though many states forbid him to carry them concealed; and when in danger of his life or of serious physical injury he may use all necessary means to protect himself, even to taking the life of his assailant. He may take the life of a burglar, who is presumed to be ready to commit murder.

The force permitted, however, depends upon the violence of the assault. A man may not, for instance, shoot boys who are stealing his apples.

In many cases the victim of an assault has his best redress in a criminal action at law against his assailant. He may even on sufficient evi-

dence require his enemy to give bonds that he will keep the peace.

His **liberty** involves the right to go or to remain where he pleases. If he is restrained of this liberty, even for a short time as by an unwarranted arrest, he may recover damages. But this liberty is not license to interfere with the liberty of others. It does not, for instance, permit entrance upon private property.

In the case of children, people of feeble mind, and others who require guardianship this liberty is to some degree limited, but only so far as it may be shown to be for their interest.

Parents (from Latin *parens*, a parent) must support and educate their children up to the age of 21. They have the right to the custody and to the labor of their children, and may punish their children within reasonable limits. As to laws with respect to marriage, see pages 146, 521.

Children may be **adopted** (from Latin *ad* and *optare*, to choose), a legal act by which an adult becomes a **foster-parent,** and takes a minor into the relation of a child, thereby acquiring the rights and incurring the responsibilities of a parent.[1] Consent is necessary (*a*) of the minor if over 12 years of age; (*b*) of the husband or wife of the foster-parent; (*c*) of the parents; or if neither is living, of a person of full age having

[1] 272:1896.

custody of the child, if there be such. The foster-parents must submit to the surrogate a written agreement to treat the foster-child as their own lawful child, whereupon the surrogate may make an order allowing the adoption. After this the child's own parents have no further rights or control over him. The adoption may be abrogated only by proceedings before the surrogate.

Where a minor has individual property, as by bequest, a **guardian** (from German *warten*, to watch) is appointed, of whom the child becomes the **ward** (from Anglo Saxon *weard*, guard). Where there are parents, one of them is usually appointed guardian. Where there are no parents the guardian enters into considerable of the parental relation, with right to the custody of the ward, and to educate him, as well as to care for his property.[1]

In the case of **apprentices** (from Latin *apprendere*, to learn), who are **bound** to give their services to a master till a specific time, usually till they are 21, in return for which they are to be taught a trade, the relation is practically that of children. The relation is uncommon in America, except where pauper or orphan children are bound out by the proper authorities to those who will care for them under an **indenture** (from Latin *in* and *dens*, a tooth), which must

[1] 272:1896.

include agreement to teach the child reading, writing, and arithmetic.[1]

The relation of **master** and **servant** (from Latin *servare*, to serve) no longer exists in its old form, where the master might beat his servant, and the servant must always defend his master. Several of the provisions of the national constitution refer to **slavery** ("all other persons", **5, 44, 75**). This was abolished in the United States by President Lincoln's emancipation proclamation of 1863, which had upon the negroes the much of the effect that naturalization has upon aliens. Slavery was subsequently forbidden by an amendment to the constitution (**98**). The civil rights bill of 1866 expressly conferred upon the freemen all the rights of citizens, and was subsequently embodied in substance in the constitution (**99**).[2]

Rights always involve corresponding **duties**, and as the rights of American citizens are greater than those of any other people, so are his duties more extensive and imperative. Of these we have frequently spoken and especially on pages 184 to 187.

The first duty of the citizen is to be **obedient** (from Latin *ob* and *audire*, to hear), to be a law-abiding citizen. There are few people to whom all the laws are agreeable, and there are fre-

[1] 488:1899. [2] B ii.§33.

quent occasions when the operation of even an admittedly wise law is inconvenient. The temptation is to disregard the law, perhaps to declaim against it. The dutiful citizen will not only obey the law, but show respect to the agent through whom the law is executed. Even if the agent is indiscreet in the exercise of his duty, the citizen should still show his regard for the law by sustaining him so far as possible. He will not only pay the taxes necessary for support of the government, but he will do so cheerfully (see page 293).

Of course a law might be passed which it would be wicked to obey. In such a case, if it be absolutely a matter of conscience, a man must be willing to bear the legal penalty until he can secure the repeal of the law. Granville Sharp "gave up his place in the ordinance office of England because he could not conscientiously handle war material to be used against the American colonies."

A second duty is that of **public service**. In a republic the office should seek the man, and when it finds him he should not shrink from the duty, even if unwelcome or onerous. Ralph Waldo Emerson served as pound-master at Concord.

He must exercise the right of **franchise** (see page 154). When the administration of public

officials seems unwise or dishonorable, he should not simply grumble but strive to supplant unworthy officers by those who are worthy, and so to correct the laws as to make misgovernment impossible.

A third duty is to be **public spirited,** ready to give his attention, his time, and his money to matters of public concern; looking to the good of the whole rather than to his individual interests alone; proud of his village and his town and his state and his country, and ready to do his share to make all these worthy to be proud of; ready to serve on a jury even when he could better afford to make a present to the plaintiff of twice the amount involved than to spare the time (see page 142), because jury-trial and justice between man and man are principles worth contending for, even when the immediate matter at issue is trifling.

The citizen should feel a pride in his community that will lead him to make personal effort in its behalf. He should be clean in appearance, and keep his home tidy, not only for his own sake but for the sake of his locality. He should be civil in manner, especially to strangers. He should feel a personal interest in the care of public property.

The author of this book never saw a filthier city than Valladolid in Spain. Yet along the

river lies a park with rare trees and flowers, unguarded save for a sign reminding the visitor that the authorities feel safe in trusting its protection to the honor of those who dwell in ancient Castile.

All the world hates a shirk, and he is an intolerable shirk who benefits by all the blessings of a free government and yet tries to evade his share in upholding its honor.

When war is declared, the citizen's duty requires him to be in readiness to become a soldier (see page 197). There may be conflict of duties; if he is the sole support of his family, he may be compelled to stand back so long as others with fewer responsibilities are rushing forward. But when he is summoned he must go, for if her citizens will not defend her, a country will soon disappear.

It is not a question whether he wholly approves of the action of the government which has led to the war. While she is in danger, he must cry:

Our country, right or wrong.

Military service may be required when no war has been declared. In time of riot, the citizen should be quick to heed the summons of the sheriff or the governor.

The time has come and may come again when it is the duty of the citizen to fight against the

government. It has been said that a **revolution** (from Latin *re* and *volvere*, to turn round) is a **rebellion** (from Latin *re*, again, and *bellum*, war) that has proved successful. It is a desperate resource, but when the government oppresses the people, when reforms within the law have failed and when the government seems likely to perpetuate itself in evil, the duty of citizens is to resist.

It is equally the duty of the government to compel obedience, and if the rebellion becomes general enough to be a formidable adversary, **civil war** results (see page 469).

When does a rebellion become a revolution? When it proves to have behind it the force of **public opinion.**

"Governments have always rested and, special cases apart, must rest, if not on the affection, then on the reverence or awe, if not on the active approval, then on the silent acquiescence of the numerical majority. It is only by rare exception that a monarch or an oligarchy has maintained authority against the will of the people."[1]

It has taken political leaders sometime to learn this. Sir Robert Peel, for instance, in a letter written in 1820, speaks with the air of a discoverer, of "that great compound of folly, weakness, prejudice, wrong feeling, right feeling,

[1] B ii.247–249; Hadley, page 139.

obstinacy, and newspaper paragraphs, which is called public opinion."[1]

Its power has been especially developed in America.[2] Bryce says: "Of all the experiments which America has made, this is that which best deserves study, for her solution of the problem differs from all previous solutions, and she has shown more boldness in trusting public opinion, in recognizing and giving effect to it, than has yet been shown elsewhere. Towering over presidents and state governors, over congress and state legislatures, over conventions and the vast machinery of party, public opinion stands out, in the United States, as the great source of power, the master of servants who tremble before it" (see page 504).[3]

"The excellence of popular government lies not so much in its wisdom—for it is as apt to err as other kinds of government—as in its strength. It has often been compared to a pyramid, the firmest based of all buildings. Nobody can be blamed for obeying it. There is no appeal from its decisions. Once the principle that the will of the majority, honestly ascertained, must prevail, has soaked into the mind and formed the habits of a nation, that nation acquires not only stability, but immense effective force. It has no need to fear discussion and agitation. It can

[1] B ii.247. [2] B ii.230, 239, 300, 308, 309. [3] B ii.255, 251.

bend all its resources to the accomplishment of its collective ends. The friction that exists in countries where the laws or institutions handed down from former generations are incompatible with the feelings and wishes of the people has disappeared. A key has been found that will unlock every door."

"If excitement has risen high over the country, a majority of the people may acquiesce; and then it matters little whether what is really a revolution be accomplished by openly violating or by merely distorting the forms of law. To the people we come sooner or later; it is upon their wisdom and self-restraint that the stability of the most cunningly devised scheme of government will in the last resort depend."[1]

President Hadley points out an important distinction. "It will be readily seen that public sentiment, as thus described, is a very different thing from much that passes under that name. If a large number of people want a thing, we not infrequently hear it said that there is a public sentiment in its favor. It would be much more correct to say that there is a widespread personal interest in securing it. The term 'public sentiment' can only be applied to those feelings and demands which people are willing to enforce at their own cost, as well as that of

[1] B ii. 269.

others. The desire for better municipal government on the part of the man who is not willing to labor for that end, the effusive patriotism of the man who hopes thereby to lead other people to enter upon a war of which he may celebrate the glories and enjoy the fruits, the denunciation of trusts by the man who has tried to do what they do and has not succeeded, can never be regarded as expressions of public sentiment in any true sense. They are but instances of the selfishness, the vain-gloriousness, and the enviousness of large sections of the community."[1]

Genuine public opinion has produced no general disposition to lawlessness, which on the contrary diminishes in the older parts of the country. And it is counter-balanced or replaced in a serious crisis by a firmness in repressing disorders which some European governments may envy. When men are thoroughly awakened to the need for enforcing the law, they enforce it all the more resolutely because it has the whole weight of the people behind it.[2]

"So far indeed, is insubordination from being a characteristic of the native Americans, that they are conspicuously the one free people of the world which, owing to its superior intelligence, has recognized the permanent value of order, and observes it on every occasion, not

[1] Hadley, page 141. [2] B ii.462.

least when a sudden alarm arises. Anarchy is of all dangers or bugbears the one which the modern world has least cause to fear, for the tendency of ordinary human nature to obey is the same as in past times, and the aggregation of human beings into great masses weakens the force of the individual will, and makes men more than ever like sheep, so far as action is concerned. Much less, therefore, is there ground for fancying that out of anarchy there will grow any tyranny of force."[1]

On the other hand, law that is in advance of public opinion can not be enforced (see page 254). "What is it that has rendered murder a rare exception instead of a frequent social event? It is not the existence of statutes which make murder a crime; it is the growth of a public opinion which makes the individual condemn himself and his friends, as well as his enemies, for indulgence in that propensity. There were laws enough against murder in Italy five hundred years ago; but these laws were practically inoperative, because they had not really formed part of the social conscience, as they have to-day. On the other hand, the social conscience of mediæval Italy, with all its laxity in the matter of murder, was strict in certain matters of commercial trust, on which it is to-day relatively

[1] B ii.456.

loose. A man actually forfeited self-respect by a questionable financial transaction in those days as he did not forfeit it by the murder of two or three of his best friends. As a consequence, that particular kind of financial immorality was much rarer then than it is now."[1]

How is public opinion directed? Not by the political leaders, who, as Bryce has said above, tremble before it.[2] Nor does it come from mental grasp of the situations presented at the various elections.[3] Indeed public opinion has often gone astray, and become tyrannical.[4] It is sentiment rather than thought that the masses contribute to the solution of the questions of the day, "and the soundness and elevation of their sentiment will have more to do with their taking their stand on the side of justice, honor, and peace, than any reasoning they can apply to the shifting of the multifarious facts thrown before them, and to the drawing of the legitimate inferences therefrom."[5]

Bryce says: "If the political education of the average American voter be compared with that of the average voter in Europe, it stands high; but if it be compared with the functions which the theory of the American government lays on him, which its spirit implies, which the methods

[1] Hadley, pages 29, 23. [2] B ii.229, 246, 260, 262, 296.
[3] B ii.242, 246, 261, 464. [4] B ii.283, 356, 360. [5] B ii.242.

of its party organization assume, its inadequacy is manifest. This observation, however, is not so much a reproach to the schools, which generally do what English schools omit—instruct the child in the principles of the constitution—as a tribute to the height of the ideal which the American conception of popular rule sets up.

"For the functions of the citizen are not, as has hitherto been the case in Europe, confined to the choosing of legislators, who are then left to settle issues of policy and select executive rulers. The American citizen is virtually one of the governors of the republic."

"The fact that it is called by a singular name has made many forget that the people means nothing more than so many individual men.

"There is a sense in which it is true that the people are wiser than the wisest man. But what is true of their ultimate judgment after the lapse of time sufficient for full discussion, is not equally true of decisions that have to be promptly taken."

"It may seem a paradox to add that public opinion is on the whole wholesome and upright. Nevertheless this also is true."[1]

Bryce pays tribute to what education is doing for popular government. "The seats of learning and education are at present among the most

[1] B ii.277, 465, 230.

potent forces making for progress and the formation of sound opinion in the United States, and they increase daily in the excellence of their teachers no less than in the number of their students. * * *

"One is amused by the bitterness—affected scorn trying to disguise real fear—with which the 'college professors' are denounced by the professional politicians as unpractical, visionary, pharisaical, 'kid-gloved', 'high-toned', 'un-American', the fact being that a considerable impulse towards the improvement of party methods, towards civil service reform, and towards tariff reform, has come from the universities, and been felt in the increased political activity of the better educated youth."[1]

The fact that a college-president was in 1901 called to the rescue of New York city from venal politicians shows the justice of this observation.

[1] B ii.295.

CHAPTER XLIX

PROPERTY RIGHTS

The constitutional guarantees of that class of personal rights that pertain to **property** have already been described (pages 147–152). Of the further rights granted by common law and by statute, only the most important can be touched upon, for the subject is vast. "The fundamental datum of modern economics is property right."[1]

Property may be acquired in various ways.

1. By **labor.** A pound of iron may by labor be transformed into watch-springs worth more than tons of iron. This labor may take the form of production, as in the case of the farmer, the miner, or the fisherman; of manufacture; of distribution as in the case of merchants, seamen, railways, cartmen; of record, as in the case of book-keepers and accountants, and, in a larger sense, of editors; of protection, as in case of police, watchmen, fire engine companies and soldiers, and, in a wider sense, of lawyers or physicians; of education, as in the case of teachers, clergymen, lecturers, and authors; of art, as in the case of painters, sculptors, and land-

[1] Hadley, page 72.

scape gardeners; of recreation, as in the case of actors and musicians.

The value of labor depends upon the ability of the worker, and also upon the rareness of the ability. Patti has sometimes received $5,000 for a single performance, in which her own singing occupied less than an hour. This was not only because she had a beautiful voice, but because there was no other voice like hers.

2. By **exchange,** or by **purchase,** which is virtually an exchange, money being the representative of labor. A shoemaker might give a pair of shoes to the hatter, in exchange for a hat, but it is simpler for the shoemaker to sell his shoes and use the money to buy a hat (see page 407).

3. By **gift** or by **inheritance** (see page 540).

4. By **accident,** as when a man looking for something else discovers a gold mine, or when a man who has been compelled to take a piece of land for debt finds that it has quadrupled in value because a large manufactory is built up near it.

When the West Shore railway was building, the contractors wanted something to fill in with near Syracuse, and paid $100,000 for the sand in a hill that had been valueless, but which, thus levelled, became eligible residence property.

Invention (from Latin *in* and *venire*, to come) is by derivation a stumbling upon a thing. Sometimes it is indeed that, as when Goodyear

in disgust cast some sulphur in his hand into a pot of melted rubber, and saw that it produced the vulcanization he had sought for. But if he had not been seeking for it, he would not have recognized the transformation; so invention is usually rather **discovery** of a principle than happening upon it.

5. By **unearned increment.** This is a favorite phrase of socialists, who consider that the advance in the value of property, through the growth of cities, for instance, should not be the exclusive right of the owner.

The experiment of holding property by communities instead of by individuals has been frequently tried, as at Brook Farm and in the Shaker communities; but though some of the latter have been for long periods in successful existence, the general sentiment of mankind pronounces individual ownership best for the man and for society.

Property must be respected, not only because it is a right of the individual but because the public good demands that industry, energy, and thrift should be rewarded. The care of their own property involves responsibility, and makes men careful, prudent, conservative.

When property is held in such quantity as to more than meet the needs of the holder it is in the popular sense called **wealth.** How much consti-

tutes this super-abundance is of course relative to the person. The saying of the late A. T. Stewart used to be considered a joke, that if a man had three or four millions he was just as well off as though he were rich; but the number of men who have hundreds of millions is now considerable.

The first condition of wealth is **thrift** or **economy**. Whatever a man earns, if he spends more he will be poor, if he spends less he will grow wealthy.

The second condition of wealth is **probity** (from Latin *probare*, to prove). Honesty is the best policy; there is no other capital so available as the reputation for square dealing. There seem to be exceptions, as where a man by sharp practices accumulates a fortune; but usually the sharp man encounters another man still sharper, and the sharpest is likely to over-reach himself. The business of to-day is conducted on the assumption that men are honest, and the assumption is generally safe.

The third condition of wealth is **judgment**, especially in buying and selling and investment. People who have saved money want it to bear interest, and it is not always easy to get a satisfactory rate of interest together with satisfactory security of principal.

But all these conditions of wealth yield to the fundamental condition of an honest and wise

government. If the government cannot protect a country from incursions from abroad or uprisings within; if it is constantly at war; if it is unstable; if it imposes oppressive taxes; if it does not compel the payment of just debts whenever possible, there will be no encouragement to accumulate property.

Where there is wealth, there is usually **poverty**, not because of the wealth but in contrast with it. People who have not complied with the conditions of wealth,—who have not been industrious or thrifty or prudent — especially those who have been dishonest or vicious, do not have wealth, do not have even property. While poverty is usually the result of lack of business-qualities, it is sometimes only a misfortune. A workman may lose his arms or his sight, or be overwhelmed by sickness in his family.

It is not a question of distribution. A wild-eyed stranger found admittance to Rothschild's office. "Your wealth ought to be divided equally over all France," he cried.

"Very well," said the banker, "here is your share;" and he gave him a 5-franc piece.

Besides, great wealth makes great benefactions possible. **Munificence** (from Latin *munus*, a gift, and *facere*, to make) is possible only where wealth is great. At the beginning of the 20th century the gifts to education averaged a million

a week. There are men of wealth who regard their money as entrusted to them, and who labor harder to take wise care of it and to bestow it wisely than any workman in their employ.

People who believe that the present division of wealth is so unequitable that it should be changed are called **socialists.** Some of them favor armed revolution; some think the battle can be won at the polls. Some are **anarchists** (see page 252), not believing in any government; others believe the government should control all industries (see page 491).

Wealth employed in industry is known as **capital** (from Latin *caput*, head, source), whether it be the farmer's store of provisions to carry him over to another harvest, or the millions required to maintain a steamship line. The object of investing capital in this way is to make **profit** (from Latin *proficere*, to advance), the surplus which the product sells for above the cost.

Frequently people who have money do not care to take the risks of a business venture, but are willing to lend their money. From such capitalists young business men often borrow enough to start with by making use of their **credit** (from Latin *credere*, to trust).

In this case the profit is **interest** (from Latin *inter* and *esse*, to make a difference), and is not, as in the case of capital regularly invested, de-

pendent upon the success of the business, but a fixed percentage, usually limited by law. In New York it must not exceed 6 per cent, and if more than that is exacted, even by consent of the borrower, it becomes **usury** (from Latin *uti*, to use), and both interest and principle are legally uncollectible.[1]

It is sometimes questioned whether interest-limiting and usury laws are wise, on the ground that the rate of interest depends on the law of supply and demand. If money is plentiful it will be lent at a low rate; if it is scarce it will be lent only at a high rate, and if a low rate is fixed by law it will not be lent at all.

It is one of the propositions of socialists that the government should lend money to the people at a low rate of interest. But in this case the government would often lose both the principal and the interest, and the amount called for would be so great that paper money would have to be issued. As this increased in volume its value would grow less, so that eventually the borrowers would be no better off than before.

Socialists often demand, too, that the government shall establish a short day and high wages. Here again it is unwise to interfere with the law of supply and demand. The higher the cost of wages the smaller will be the profit of the busi-

[1] 430:1837.

ness, till eventually the profit will disappear, whereupon the business will stop and the laborers lose employment.

All business is subject to **competition** (from Latin *con*, together, and *petere*, to seek), and unless it can furnish products of a superior quality or at a lower price than its rivals it will languish. If **trade-unions** by excluding the unworthy and incompetent from membership hold up a high ideal of workmanship, so as to produce superior articles with economy of material and power, and this at a minimum cost, they benefit capital and labor alike. Thus all the efforts to do away with **sweat shops,** or private dwellings where garments and other goods are manufactured at low prices but under unhealthful conditions, deserve the highest praise. But if they seek only short hours, high wages, and rapidity of work lowered to the ability of the poorer workmen, they will make it impossible to compete with other establishments.

On the other hand if competition is stifled oppression may result. If a **monopoly** (from Greek *monos*, alone, and *polein*, to sell) to manufacture salt were given to a single man, he could charge whatever price he chose, and as men must have salt he could make himself enormously wealthy.

Some monopolies are inevitable. Patti's voice is a monopoly (see page 508); patents and copy-

rights protect monopolies. But no one is compelled to pay five dollars to hear Patti sing, or to buy a patented article or a copyrighted book; if the prices are fixed above the value the world does without them. When Great Britain put a tax on tea the Americans would not buy it, though the reason was not the price. But when a necessity is made a monopoly oppression results.

Monopolies exist now principally through private **corporations** (see page 28), which the New York constitution defines as "all associations and joint-stock companies having any of the powers of corporations not possessed by individuals or partnerships" (**243**). When these unite so as to put under a single head all or nearly all the producers of a certain article they become known as a **trust.** Most states have laws forbidding such combinations. The national law of 1890 makes illegal every combination in restraint of trade among the states or with foreign nations; and that of 1894 declares it to be against public policy and illegal for two or more corporations, either of which is engaged in importing any article from a foreign country, to combine with intent to restrain free competition or increase the market price.[1]

The New York constitution requires corporations to be created under general laws (**241**). It

[1] Hadley, pages 12, 14, 50.

forbids the use of the state credit to them (**249**).

Hadley says: "The name 'trust', which is popularly applied to all these large aggregations of capital, was somewhat accidental in its origin. It has, however, an appropriateness which few persons realize. The managers of every consolidated enterprise, whether based on a contract, a trust agreement, or an actual consolidation, are exercising powers to benefit or injure the public which are analagous to those of a trustee. It has been said that all property is, in its wider sense, a trust in behalf of the consumer. But where competition is active, the power of using wrong business methods and unfair prices is so far limited that the chance for abuse of this trust is greatly lessened. It is only in the case of large combinations, with their discretionary power for good or evil, that the character of the trust reposed by society in the directors of its business enterprises makes itself really and truly felt."[1]

"Greater strictness with regard to the formation of new companies, increased publicity of accounts, clear recognition, legal and moral, of the responsibility of directors, who have made false reports to the stockholders—these are conditions precedent to any radical and thorough reform of existing abuses."[2]

[1] Hadley, page 43; [2] page 46.

"It is safe to say that in those industries which are at all thoroughly monopolized public safety will generally demand that duties be placed on a revenue rather than a protective basis. The fact that an industry can thus organize itself shows that it has outgrown the period of infancy. If it continues to demand a prohibitory tariff on its products, the presumption is that it is trying to make an arbitrary profit at the expense of the consumer."[1] (See page 297).

The most important corporations are now the **railways**; and the **interstate commerce commission** (see page 404) was organized, under a law authorizing it to fix maximum rates between shipping points for the lines operating between them, and forbidding roads to charge more for carrying goods a short distance than for a longer one including the same portion of the road. The law of 1898 makes the chairman of this commission and the commissioner of labor a board to bring about the arbitration of railway labor disputes.

A **contract** (from Latin *con*, together, and *trahere*, to draw) is an agreement by one person with another to do or not do a certain thing. It may be **express** (from Latin *ex*, out, and *premere*, to press), when the terms are specified either orally or in writing; or **implied** (from Latin *in*

[1] Hadley, page 47.

and *plicare* to fold), as when a man telephones to the grocer to send up a barrel of flour he implies that he will pay for it.

Most contracts are **oral,** but the more important are usually **written,** and any contract not to be performed within a year, and some, like deeds and contracts to sell personal property over $50 in value (see page 539), must be written. When a contract is in writing, neither party may claim that the intention was different from that expressed.

To be valid a contract must fulfil certain conditions.

1. Both parties must be **capable** to contract. Idiots and lunatics can not be held to contracts. A contract with a minor is voidable, except that when he is without parent or guardian to supply them he may contract for necessaries, such as food, clothing, and education, and may be made to pay for them. Any contract made by a minor may be ratified by him after he becomes of age.

Married women were at one time legally incapable to make separate contracts, on the ground that husband and wife were one; but in most states they may now buy, sell, or make any contract necessary for the management of their separate property, and may make any contract in connection with a business they are managing.[1]

[1] 417:1897.

In general a contract made by an **agent** (from Latin *ago*, to act, a general term for all employes), is binding upon his **principal,** the man by whom he is employed (1) if the agent is acting within the authority granted to him, and (2) if at the time of making the contract he does so in the name of his principal; otherwise the agent alone is bound. This applies to those who sell goods on **commission** (from Latin *con*, together, and *mittere*, to send), and to **brokers.**

Even when an accident results from carelessness of the agent, the employer is responsible for damages if the act was committed in the discharge by the agent of his authorized duties. Thus if a guest is injured on an elevator by carelessness of the boy employed to run the elevator in a hotel, he can recover damages from the boy's employers.

In **partnership,** where two or more persons contract to join their labor, skill, or money, the profits and losses to be shared in agreed proportions, it is the general rule that the act of one partner binds all in acts pertaining to the business in which they are engaged, but not further. Thus purchase by one of material for manufacture in the business would bind the others; but purchase of a house for himself would not bind the others. In **limited partnership,** where persons become **special partners,** putting into the

firm a certain amount and not being responsible beyond that, the terms of partnership must be published in the newspapers.

2. There must be **mutual assent.** It takes two to make a bargain, and an offer made by one does not bind the other. If the proposition is made by mail, a letter accepting it and mailed before a letter has been received retracting the proposal, makes the contract complete.

Thus services which are rendered without request afford no legal claim for payment, even if necessary, as when a man finds another's house on fire and saves much of the property, at pains and risk. There is, however, an exception when a vessel at sea is rescued. The rescuing vessel is entitled to **salvage** (from Latin *salvare*, to save). Even wrecked property cast upon land entitles the finder to salvage.[1]

The assent must be given **freely**; the contract is void if force or threats are used to extort it.

It must also be **with full knowledge.** If **fraud** is used in misrepresenting or concealing facts, the contract is voidable.

3. There must be a **consideration,** something named and promised as a reason why each person enters into the agreement. A promise to give another person money or property without

[1] 569:1890.

consideration is not a contract, and can not be enforced.

4. It must be **possible.** A man may not bind himself to do what no man can do. A contract to prevent the tide from rising would be void. But if a man has undertaken to do something usually possible but prevented by accident, as by his breaking his leg, he is liable for damages for not fulfilling the contract.

5. It must be **legal.** A contract to violate the law is void. Hence gambling debts can not be collected by legal process.

Of all contracts **marriage** is the most important. Of its form we have already spoken (page 146). The New York law[1] requires that both parties must be (1) at least 18 years old, (2) of good understanding, (3) consenting without force, duress, or fraud, and (4) not related as ancester and descendant, as whole or half brother and sister, as uncle and niece or aunt and nephew. **Bigamy** (from Latin *bis*, twice, and Greek *gamos*, marriage), or marriage with a second wife or husband while a first is still living, is not only a crime but no marriage, unless (1) the former marriage has been annulled for force, fraud, or other reason; or dissolved by **divorce** (from Latin *dis*, apart, and *vertere* to turn; see page 146); or the former husband and wife has (2) been sen-

[1] 272:1896.

tenced to imprisonment for life; or (3) been absent for the past 5 successive years without being known to the person now marrying to be living during that time.

Polygamy (from Greek *polus*, many, and *gamos*), or marriage with more than 2 wives, is forbidden by United States law, but is understood to be still practised by the Mormons in Utah.

The husband must maintain his wife; and he must pay all bills she contracts for necessary things unless she voluntarily leaves him.

Contracts for **insurance** (from Latin *in*, *se*, without, and *cura*, care) are called **policies** (from same root as political; see page 28); the insured pays a fixed annual amount called a **premium** (from Latin *prae*, before, and *emere*, to buy). New York has a superintendent of insurance (see page 202).

In **fire** insurance, the company agrees to pay, within the limit of the policy, all damage from fire and in consequence from fire, as from the wetting of goods caused by water used in putting out the fire. In **marine** insurance, if the vessel or cargo is damaged to half its value, the owner may give up the remainder and claim a total loss. In **life** insurance the company agrees to pay a specified amount upon the death of the insured. **Endowment** policies sometimes provide for payment of the amount during the life of the insured, at a named date.

Policies may be made payable to the person taking out the policies or to others, but in the latter case the person to whom a policy is payable must be able to show some interest in the life or property, as of relationship or debt. This if without such claim a man should take out a policy upon the life of the president it would practically be making a wager that the president would not live. If this were freely allowed a great many might become interested in his not living.

When a contract is not fulfilled, the aggrieved party usually applies to the court for **damages**; but sometimes the court may compel fulfilment, as when a man who has contracted to remove a brewery continues to use it, or a man who has contracted to sign a deed refuses to do so. A third remedy, in case there has been fraud in framing or evading the contract, is an action for **tort** (from Latin *torquere*, to twist), which is usually applied to damages arising otherwise than by contract. The constitution forbids that laws shall be passed impairing the obligations of contract (**51**).

Damages for failure to fulfil a contract must be brought within a **limited time.** Thus after 6 years a debt in New York becomes **outlawed,** and if judgment of the supreme court (see page 226) is secured it must be collected if at all within 20 years.

At one time the law required all debts to be paid, and the debtor who failed to pay was imprisoned. This is now uncommon, recovery of debt being possible only so far as property of the debtor can be discovered to levy upon. More than this, such property as is absolutely necessary to enable a man to continue his employment is **exempt** (from Latin *ex*, out, and *emere*, to buy) from execution. In New York, in case of a householder having a family for which he provides, necessary household furniture, working tools and team, professional instruments, furniture and library not exceeding in value $250, are exempt from levy and sale.[1]

A person who owes more than he can pay is **insolvent** (from Latin *in* and *solvere*, to loose), and when this insolvency is legally announced he becomes **bankrupt** (from Italian *banca*, bank, and *rotta*, broken). In English law anybody may become insolvent, but until 1861 only traders could become bankrupt.

Congress is authorized (29) to establish laws on the subject of bankruptcies uniform through out the United States. The object of American bankrupt laws is two-fold: to insure equitable division among the creditors of such assets as exist; and to enable the debtor on turning over all his property to start anew without a load of

[1] 116:1901.

debts hanging over him which might discourage effort. In this respect the United States is more liberal than England, where the bankrupt loses both credit and social position—a bankrupt can not sit in parliament; and France, where he is also legally prevented from engaging in new business on his own account till he has paid his outstanding obligations.

Under the law of 1898 any person (corporations are excepted) may become a **voluntary** bankrupt by filing a petition in the United States district court asking to be so adjudged; and, unless a wage-earner or farmer, may be adjudged an **involuntary** bankrupt for (1) conveying, concealing, or removing any part of his property with intent to defraud creditors; (2) giving any of his creditors preference by conveying to them any of his property; (3) making a general **assignment** (from Latin *ad*, to, and *signum*, sign; in which case if all the creditors agree to release the debtor upon the distribution of his property he is released from his legal obligations) of his assets for the benefit of his creditors; or (4) admitting in writing his inability to pay his debts and willingness to be adjudged a bankrupt.

Under this law a trustee of the bankrupt's estate is appointed, with powers like those of the executor of an estate (see page 542).

Some states have also insolvency laws, reliev-

ing from a liability to imprisonment for debt on surrender of all property, but these do not affect citizens of other states.

Under the present bankruptcy law, most of the property found is often consumed in paying legal expenses, and the creditors get little satisfaction. While the law legally discharges the bankrupt, the moral obligation to pay his debts still remains, and in rare instances when fortune returns he repays his former creditors with interest.

It is claimed that the present law has put an end to fraudulent failures by chattel mortgage (see page 537); and by confessions of judgment, where a civil suit is brought, no defence is offered, and judgment is rendered (see page 266), in both cases without consideration and to put the property into the hands of some friend who will afterwards turn it over to the bankrupt. Under the state law judgments held against the property in the order in which they were filed, so that when failures occurred there was a race among creditors to get to the county clerk's office first (see page 535). The assignor also had the privilege of "preferring" creditors, thus putting all his property into the hands of his relatives or fellow conspirators.

Negotiable paper includes all evidences of debt that bear upon their face the words "or bearer",

" or order "; or other words that make the paper transferrable from one person to another, such as bank-notes, checks, drafts, promissory notes, etc.

For bank-notes see page 416.

Such paper is **negotiable** (from Latin *negotium*, business, from *nec*, not, and *otium*, leisure) because it can be readily transferred, and to make it more available it has some peculiar privileges. Thus if a note payable to bearer or endorsed in blank is stolen and filled out, a purchaser who bought the note in good faith could collect it (compare page 530). Though this often works injustice it is on the whole a benefit, since the usefulness of negotiable paper is so great that all possible safeguards must be thrown about its purchase.

A **check** is a request upon a bank where the drawer has money deposited to pay the amount named to bearer or to the order of a person named (see page 417).

If a check is payable to the order of a person who desires to have it paid to some one else, he **indorses** (from Latin *in*, upon, and *dorsum*, back), it, (1) by writing his name on the back, which makes it payable to bearer; (2) by writing " pay to the order of " the person to whom he desires to transfer it; or (3) by writing above his name " without recourse " (see page 530).

Should the check be drawn upon a bank, where the maker has insufficient funds to meet it, it is **protested** (from Latin *pro*, before, and *testis*, a witness), and notice of the same sent both to the maker and to the person who presents it, with notary fees, usually of $1.25 or $1.50, to be paid the bank where it was presented.

If however the indorser instead of simply writing his name on the back of the note has qualified the endorsement by writing "without recourse", he is not liable for protest fees if the note is unpaid.

A check may be upon request **certified** by the bank, in which case the bank becomes responsible for its payment, even if it allows the deposited funds of the drawer to be reduced below the amount.

A **due bill** is an acknowledgement of indebtedness, as:

$50. SYRACUSE, N. Y., Oct. 3, 1901.

Due J. H. Smith fifty dollars,

HENRY BROWN.

It may be made payable in merchandise, as:

$38.50. SYRACUSE, N. Y., Oct. 3, 1901.

Due A. L. Jones thirty-eight $\frac{50}{100}$ dollars in merchandise. ANDREWS BROTHERS.

A **draft** (see page 417) or **bill of exchange** is a written request made by one person to another to pay a certain sum of money to a third. The following is a common form:

C. W. BARDEEN
SYRACUSE, N. Y.

SYRACUSE, N. Y., Oct. 3, 1901.

At sight pay to the order of the cashier of the National Bank of Syracuse one hundred seventy-five $\frac{14}{100}$ dollars, and charge to my account.

To Albany News Co.
Albany, N. Y. C. W. BARDEEN.

Such a draft is only a request, and may be refused. The words "protest waived" are often inserted or attached to the draft so that if not accepted it may not be protested, incurring protest fees.

If the Albany News Co. **accepts** the draft, it writes across the face something like, "Accepted, payable at City National Bank, Albany News Co. per John Smith," after which it is practically a check drawn by them.

A **promissory note** not only acknowledges indebtedness but promises to pay it, usually on a specified time.

To be valid a note must be a (1) written and (2) signed and (3) unconditional promise to pay[1] (4) a designated amount, (5) on demand or at a specified date. The date and that it is for value received are not required by New York law.[2] If it is to bear interest it must say so, otherwise

[1] 612:1897. [2] 612:1897.

it will not begin to draw interest till after it is due. If payable on demand it will begin to bear interest after payment has been demanded.

In order to be negotiable it must be made payable to bearer or to the order of the payee. On a note intended to be discounted it is customary for the maker to name the bank at which it is to be paid, in which case it may be presented there on that day, like a check. If there are no funds to meet it, it will be protested, like a check. In such case each endorser is liable, provided notice be sent to each. The last endorser looks to the one before him, and so on back to the maker of the note. Notice of protest must however be sent to the indorsers *immediately* in order to hold them responsible. See page 527.

To be **competent,** the maker of a promissory note must be of age and not insane or an idiot. In some states married women are incompetent, but not in New York.[1]

In case of **forgery** (see page 553) of negotiable paper, either in the name of the maker or endorser, or by changing the amount, it ceases to be negotiable and conveys no liability against the person whose name is forged, or, in case the amount is changed, who really signed it. Hence banks have to scrutinize carefully the checks

[1] 417:1897.

and notes presented, as they are liable for any mistake or fraud.

In this country most real property (see page 147), or real estate, as it is oftener called, is owned by **estate in fee** or **estate in fee simple,** the ownership being unqualified, and including the right to sell and to transmit. **Estate for life** gives the holder only a life tenancy. He has the income from it, but may not sell or mortgage it, or destroy the buildings, or otherwise injure its value.

A widow's right of dower (see page 534) is an estate for life; if a child dies owning real estate his father inherits estate for life in it. The heirs to whom the property will belong upon the death of the person holding estate for life in it, have **future estate** in property. For **allodial tenure** see page 149.

An estate for life is often bequeathed to a spendthrift or dissipated child, for whom it is desired to provide an income without giving opportunity to squander the property. This may be accomplished in another way by deeding the property to some responsible person **in trust** for the child, with powers varying according to the will.

Adverse possession is possession of real property avowedly contrary to some claim of another in the same property.

An **estate for years** is the right to possess and

use real estate for a definite time, and is conveyed by a **lease** (from Latin *laxare*, to loose). If for more than a year the lease must be in writing.

A lease is a contract and must specify a consideration, commonly known as **rent** (from Latin *re* and and *dare*, to give back, to pay), usually in money to be paid at stated periods, but sometimes in services, in a share of the produce, in profits, or otherwise (see page 140). If the landlord makes changes in the premises rendering them useless to the tenant, the tenant may withdraw without paying rent; but if there is accidental destruction by flood or fire the rent is due, and neither landlord nor tenant is under legal obligations to rebuild a house destroyed by fire. The landlord is not obliged to make repairs unless this is specified in the lease. The tenant must return the property in as good condition as he took it, except for ordinary wear and tear.

If the property is sold, the change of ownership does not affect the rights of the tenant. Unless restrained by the lease, the tenant has the right to assign his lease, in which case the new tenant pays rent to the landlord; or to sublet part of the premises, in which case the new tenant pays rent to the tenant. When the lease has expired, or if the tenant fails to pay or if he unlawfully injures the property, he may be **evicted** (from Latin *e* and *vincere*, to overcome)

by suit at law, through the sheriff. If the lease is for an indefinite period, the eviction must be preceded at least a month by **notice to quit.**

The **appurtenances** (from Latin *ad* and *pertinere*, to belong) of real estate are the minor rights which are transferred with it upon change of ownership, such as buildings, fences, trees, springs, quarries. They may include **right of way** over other property—that is, the right to pass over real estate belonging to another, as to reach a spring or a field. Right of way is usually granted by document, but when the privilege has been unquestioned for 20 years it becomes a right by usage. On the other hand if unused for 20 years it ceases.

In the case of **highways,** the owner of adjoining land owns the land to the centre of the road, and the public has only right of way. When a highway is obstructed the public has right of way upon adjoining land. Boundary rivers, not navigable, are also owned to the middle line by the owners of adjoining property. In the case of **streams** flowing through the land, while the owner may use the water for water-power or otherwise he must not diminish its volume, or give the stream another direction; nor may he by a dam cause the water to overflow his neighbor's land.

In cities blocks of houses are often built with

a **party wall** between them—that is a wall used for both houses, with timbers from each house inserted. In such cases neither may remove the wall without consent of the other.

Trespass is entering upon another's premises without permission.

The written instrument by which ownership of real estate is transferred to another is called a **deed** (from Latin *dare*, to give). It must be (1) written, (2) dated, (3) signed, (4) sealed, and (5) delivered; and to be valid against other conveyances of the same property must be (6) recorded in the office of the county clerk. It must also contain (7) a description of the property conveyed, and (8) the name of the person to whom it is conveyed. If the property is owned by a married man, the deed must be (9) signed by the wife, or if she outlives her husband, she will at his death have a life-interest in $\frac{1}{3}$ of the property.

This right is called the **right of dower** (from Latin *dotare*, to endow), "the third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage."[1] This right is not affected by deed or mortgage unless given by consent of the wife, nor by judgment against the husband.

Dowry is now distinguished in use from dower as the portion of a bride at marriage.

[1] 547:1896.

The real property of any woman acquired before or after her marriage, remains her separate property, not liable for her husband's debts. She may dispose of her real and personal property by sale or by will. She may be a guardian, executrix, or administratrix (see page 542), and may give the necessary bonds.

The importance of recording the deed is manifest; otherwise the same property might be deeded to different persons. Before recording it, the county clerk usually requires an **acknowledgement**, a certificate by notary public or other authorized officer on the back of the deed, that the maker appeared before him and acknowledged that he was the person who executed the deed. In New York this may be dispensed with, and the execution proved by a subscribing witness. After the acknowledgement no change whatsoever must be made in the deed.

In a **warranty deed,** the person conveying the property insures the title in the land conveyed against all persons whatsoever; while a **quit-claim deed** simply conveys the interest which the grantor has in the land, whatever it may be. Executors, guardians, and administrators seldom give warranty deeds.

The warranty is a covenant, and there may be other covenants in the deed, as that there are no taxes, mortgages, **liens** (from Latin *ligare*, to

Deed with Full Convenants

This indenture, made the ..... day of ..... in the year nineteen hundred and ..... between ..... of (insert residence) of the first part, and ..... of (insert residence) of the second part:

Witnesseth, that the said party of the first part, in consideration of ..... dollars lawful money of the United States, paid by the party of the second part, doth hereby grant and release unto the said party of the second part, his heirs and assigns forever (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever. And the said party of the first part doth covenant with said party of the second part as follows:

First. That the party of the first part is seized of said premises in fee simple, and has good right to convey the same.

Second. That the party of the second part shall quietly enjoy the said premises.

Third. That the said premises are free from encumbrances.

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth. That the party of the first part will forever warrant the title to the said premises.

In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

In presence of:

bind, a legal claim as security for debt or charge, or other incumbrances upon it.

Upon payment of a fee an official **search** is made at the county clerk's office, which becomes a guarantee that (1) the title is vested in the person selling; and (2) there are no **incumbrances** upon the property, such as previous deeds, mortgages, judgments against the seller, etc.

The New York statutes[1] give a form of deed which complies with all provisions of the law. It is printed on the opposite page.

A **mortgage,** given as security for money loaned or otherwise due, is in form somewhat like a deed and subject to the same conditions; but it is provided that the transfer of the property shall occur only in case the person giving the mortgage fails to pay as provided the interest and principal of the amount due. When the debt is paid the mortgage becomes void, and this **satisfaction** of the mortgage should be recorded in the county clerk's office, leaving the title clear in the original owner.

If the conditions of the mortgage are not complied with, the holder may begin proceedings to **foreclose** (from French *fors*, *hors*, outside, and *clore*, to close), that is to sell the property and devote the proceeds as far as necessary to the payment of the amount due.

[1] 277:1897.

A **chattel mortgage** is a mortgage upon personal property (see page 151) or chattels (from Latin *capitalis*, chief, because cattle, the same word, used to form the principal part of a man's property; compare page 147). It is good against the grantor for 6 years, or if under seal for 20 years; but against other purchasers it is good only for a year unless renewed; and must be filed in the office of the town clerk, or if executed in towns where the office of county clerk is situated, in the office of the county clerk.

A mortgage accompanies a **bond** (see page 46), a written instrument under seal by which the borrower acknowledges himself "held and bound firmly" to the lender for the payment of the money borrowed, or for the performance of other obligations named in the bond.

The bonds hitherto referred to (pages 46, 141, etc.) have been guarantees of the persons giving the bonds that the officer will truly and well perform all his duties, and pay over all moneys required in the bond, or that the person charged with the offence or indictment will appear when wanted.

When the bond is given for the payment of a certain amount of money the penalty is usually fixed at double the amount of money required to be paid; but the courts require the payment only

of an amount which will be a complete indemnification for damages sustained.

The rights of **eminent domain** and **escheat** have already been explained (page 150).

Real estate may always be located and found, but **personal property** may disappear (see page 301), so there are some restrictions upon the sale of the latter. If at the time of the sale the property has ceased to exist, as in the case of a cow that has died or goods that are burned, the sale is void. Sales may be made however of articles which the seller expects to secure; thus a farmer may sell his approaching crop of wheat.

The sale may precede delivery, and is complete when the contract is made. If the article is destroyed after sale and before delivery the loss is the buyer's. New York requires that a contract for a sale exceeding $50 must be in writing unless the buyer receives part of the goods or pays part of the purchase money.[1] Entry upon the sale-book of an auctioneer is a written contract.

The buyer is entitled to delivery only on payment of the price, the seller in the mean time having a **lien** (see page 535) upon the property. But if the seller delivers the property before payment, and without fraud on part of the buyer, he loses the lien and has simply an ordinary claim

[1] 417:1897.

against the buyer for the amount due. This is true of all goods sold on credit.

If the property sold is not the property of the seller, as where it is stolen or found, the true owner may claim it at any time, *except* in the case of money and negotiable paper, such as promissory notes, government bonds, etc. A person who gets these for consideration, that is who pays something for them, and has no reason to suspect the seller does not own them, has title to them.

In the sale of personal property there may be a **warranty** (see page 30) of title and of quality; but without this the buyer is supposed to examine the article for himself, and to stand the loss if it proves not to be what he expected.

The property of people who die is usually transferred to others by **will** of the person deceased, who is called the **testator** (from Latin *testis*, a witness), and his will a **testament.** As a rule a man may leave his property as he pleases and to whom he pleases, and he may destroy any will, or change it in any way; but there are these limitations:

(1) The testator must at the time of making the will be of full age and sound mind. If it can be shown that he was not of sound mind or that he was unduly influenced by some one, the will is declared void.

Males 18 years of age may bequeath personal estate by will.[1]

(2) The will must be written, and signed with their post-office addresses in the presence of the testator and of each other by at least 2 witnesses, in whose presence the testator signed it or acknowledged signing it, and declared it to be his last will and testament.

An unwritten or **nuncupative** (from Latin *nomen*, name, and *capere*, to take) will, one made by word of mouth before witnesses, is valid in the case of soldiers in service or sailors at sea.

(3) Bequests to benevolent societies must have been made at least 2 months before the death of the testator.[2]

(4) If the testator has wife or husband, children or parent living, not more than half the estate can be given to benevolent purposes[3].

Bequests of real estate to aliens are of course void (see page 150).

If a second will is made that does not expressly revoke a former will, both stand except so far as contradictory, but where contradictory the latter prevails. It is best to begin the will: "I make this as my last will and testament, hereby revoking all former wills made by me."

A will destroyed by the testator is void; but if destroyed by any other person, it is valid unless

[1] 782:1867. [2] 319:1898. [3] 360:1860.

it be proved by 2 witnesses that it was destroyed by direction and consent of the testator. The cancelling of a second will does not revive the first.

A **codicil** (from Latin *codex*, the tablet of wood smeared with wax used for writing) is an additional will, changing it as the testator may desire, and must be executed with the same formalities.

As the word "bequeath" applies properly to the personal estate and "devise" to real estate, it is safest to begin: "I give, bequeath, and devise my estate and property, as follows: that is to say:"

A person who inherits property is an **heir** (from Latin *heres;* see page 478).

If a person is named in the will to carry it into effect he is called the **executor** (from Latin *ex* out and *sequi*, to follow, compare page 264); if no person is named, or if the person named declines to serve, the surrogate appoints an **administrator** (from Latin *ad* and *minister*, a servant, see page 464), to settle the estate in accordance with the provisions of the will. This is called giving **letters testamentary** or administrative.

(5) The widow is entitled to right of dower (see page 534); but provision may be made for her in lieu of right of dower, in which case she has the option either to insist upon dower or take the provision made.

If he leaves no will, a person dies **intestate** (from Latin *in*, not, and *testis*, a witness), in which case the estate is divided according to the provisions of the law. In New York real property descends, aside from the right of dower (see page 534) (1) to lineal descendants, children, grandchildren, etc.;

(2) to the father unless the estate came from the mother, when the father has a life interest in it (see page 531);

(3) to the mother, unless the intestate person left brothers or sisters or their descendants, in which case the mother has a life interest in it;

(4) to collateral relatives, brothers, sisters, etc., share and share alike, no preference being given on account of age or sex.

Personal property descends in the same order, without the limitations named.

CHAPTER L

CRIMES AND PUNISHMENTS

A man may be very wicked, and yet unpunishable by law. He may have **vices** (from Latin *vitium*, a vice), indulging his appetites inordinately; he may commit every day **sins** (from Latin *sons*, guilty) of omission and commission against divine law; he may be indolent, drunken, untruthful, a wretch in his own eyes and in that of his neighbors, and yet be left undisturbed by the law so long as he does not violate its provisions. If his indolence leaves his family unsupported, if his drunkenness becomes a public disturbance, if his untruthfulness is shown when he is a witness in court, then the law will punish him; not because he is **wicked,** which is a matter between him and his conscience, but because he is an **offender** against the laws established by the people for its protection (see page 252). The purpose of criminal law is not the reformation of the offender but the protection of society.

A crime is an act or an omission to act forbidden by law. Under the old English common law (see page 254), offences against the law were

divided into 3 classes: (1) those punishable by death were called **crimes** (from the root of Latin *cernere*, to discern); those punishable by forfeiture of goods were called **felonies** (from Old English *fel*, cruel), and were often also punishable by death; (3) those deemed worthy of a lighter punishment were called **misdemeanors** (from Latin *mis*, and *minari*, to threaten).

These distinctions have largely disappeared. The New York criminal code divides all crimes into 2 distinct classes:

felonies	*misdemeanors*
punishable by death or by imprisonment in *state* prison.	punishable by imprisonment in *county* jail or penitentiary.

For both felonies and misdemeanors fines may also be inflicted, sometimes in place of and sometimes in addition to imprisonment.

The usual limit of punishment for misdemeanors is imprisonment for not to exceed 1 year, or by fine not to exceed $500, or by both. Some offences are punished also by removal from office or by disqualification to hold any place of trust, honor, or profit, under the state (see p. 549).

At common law an **infamous crime** (**88**, **117**, **131**) was one upon conviction of which a person became incompetent as a witness,[1] including treason, perjury,[2] larceny, knowingly receiving

[1] 13 Dill. 275. [2] 4 Saw. 211.

stolen goods, and all crimes which create a violent presumption against the truthfulness of the party under oath,[1] but not including misdemeanors.[2]

As testimony is the basis of legal proceedings, the law is severe against **perjury** (from Latin *per*, though, over, and *jurare*, to swear), declaration under oath of what a person knows to be untrue. If a perjurer has taken the oath before a national official he is punishable by fine not to exceed $2,000, and imprisonment for not more than 5 years, and is thereafter incapable of giving testimony in any national court.[3]

Subornation of perjury is instigating another to swear falsely, and is subject to like punishment.

The greatest of crimes is that committed against the **state**, called **treason** (from Latin *tradere*, to betray). It may consist in levying war against the United States, or in adhering to its enemies, giving them aid and comfort (**70**). The criminal code of New York adds as a form of treason, combining to overthrow the government by force; but the United States supreme court has ruled: "However flagitious may be the crime of conspiring to subvert by force the government of our country, such conspiracy is not treason. To conspire to levy war and actu-

[1] 11 Met. 302. [2] Cent. L. J. 205. [3] U. S. Rev. Stat. §5392.

ally to levy war are distinct offences." Of constructive treason we have already spoken (page 141).

No person may be convicted of treason unless on the testimony of 2 witnesses to the overt act, or on confession in open court (**70**).

It is punishable by death; but by law of 1862 the sentence may be imprisonment for not less than 5 years and a fine of not less than $10,000 (see page 140).

Aaron Burr was tried for treason in 1807, but acquitted. Gen. Hill surrendered Detroit without resistance in 1812; he was tried for treason, found guilty, and pardoned by President Madison. John Brown was tried in 1859 for murder and treason, but was found guilty of murder and hanged for that. Jefferson Davis was captured in 1865 and confined in Fortress Monroe. In 1867 he was charged with treason and admitted to bail; in 1868 he was discharged.

After the civil war political disabilities were laid upon many of the southern leaders (**101**), but these were removed by congress in 1894.

Anarchy (see pages 252, 512) is universal treason, a purpose to destroy all governments. When President McKinley was assassinated in 1901 by an anarchist, it was recalled that within 7 years a president of France, a king of Italy, an empress of Austria, and a prime minister of Spain

had met the same fate. In his first message President Roosevelt recommended legislation, saying that anarchists should be kept out of this country; that if found here they should be promptly deported to the country whence they came; and that far-reaching provision should be made for the punishment of those who stay. He said:

"Anarchy is a crime against the whole human race, and all mankind should band against the anarchist. His crime should be made an offence against the law of nations, like piracy and that form of man-stealing known as the slave trade; for it is of far blacker infamy than either. It should be so declared by treaties among all civilized powers. Such treaties would give to the federal government the power of dealing with the crime."

Among crimes against the **elective franchise** are the following, all misdemeanors:

attempting to vote at an election or caucus, when not entitled to do so;

attempting to vote more than once;

attempting to vote 2 or more ballots, or to add ballots to those already cast;

making a false declaration at enrolment;

as an election officer making false returns;

doing any fraudulent act to affect the result

of an election or caucus, including bribery of or intimidation of voters or election officers;

using authority as an election officer of the state to collect political assessments from subordinates;

failing as a candidate to file an itemized statement showing in detail all the moneys contributed or expended by him in aid of his election.

Among crimes against the **executive** power of the state are:

assuming office without having qualified;

offering reward for appointments;

resisting officers: all misdemeanors.

Offering to **bribe** an executive officer or as executive officer asking or receiving a bribe, is a felony (283), punishable by not to exceed 10 years in state prison or a fine of $5,000, or both. In addition the officer is forever disqualified from holding public office in the state. Any officer or subordinate who asks or takes unlawful fees is under similar penalty (282), and the crime is known as **extortion** (from Latin *ex* and *torquere*, to twist). No public officer is even permitted to ask or accept a railway pass (285).

Crimes against the **legislature** include preventing the meeting or organization, compelling either house to pass or not to pass a bill, altering the draft of a bill, and bribery, which are felonies; and disturbing the sessions, intimidat-

ing the members, refusing to appear when called as a witness or to testify, which are misdemeanors.

Crimes against the **judiciary** include bribery, injury to public records, offering for record forged instruments, and perjury, which are felonies; and **embracery** (an attempt to influence court or jury by promises, etc.), destroying evidence, preventing witnesses from attending, rescue or concealment of prisoners, and misconduct of officers, which are misdemeanors.

A citizen who refuses when commanded by him to aid an officer making an arrest is guilty of a misdemeanor. After the governor has issued a proclamation declaring a county to be in a state of insurrection, a person who interferes with the law or refuses when summoned to aid in sustaining it is guilty of a felony.

To **compound** (from Latin *con*, together, and *ponere*, to set) crimes, that is to accept a bribe to conceal a crime, is a felony if the crime was such; otherwise a misdemeanor.

Contempt of court may be shown by disorderly behavior in court, attempt to deceive the court, refusal to be sworn as a witness, publication of a grossly inaccurate account of its proceedings, or resistance to its mandates. It is commonly punished by the judge on the spot, by fine or imprisonment.

Of crimes against the person **suicide** (from Latin *sui*, one's self and *caedere*, to slay), the intentional taking of one's life, is not punished; but an unsuccessful attempt is a felony; and to assist another to suicide is **homicide** (from Latin *homo* man, and *caedere* to kill), the killing of one human being by the act, procurement, or omission of another. When the act is not designed to kill it is **man-slaughter**; but it is **murder** (from Latin *mors*, death) in the **1st degree,** when without excuse, and (*a*) deliberate, and premeditated; (*b*) or by an act regardless of human life, as in wrecking a railway train; (*c*) or by a person committing a felony upon or affecting the person killed; or (*d*) while committing arson in the 1st degree (see page 553). It is murder in the **2d degree,** when designed to kill, but without deliberation and premeditation.

Homicide often results from what was intended for **assault** (from Latin *ad*, upon, and *salire* to leap) and **battery** (from Latin *batuere*, to strike), the usual legal term for attack with the fists or such a weapon as a cane or club, intended to injure but not kill.

To **kidnap** a person is to seize him against his will and carry him away.

Homicide may be lawful. As we have already seen (page 492) a man may kill another in self-defence, and he may do so to prevent an atrocious

crime. An officer may kill a prisoner if necessary in the effort to take him or to prevent his escape. Homicide is justifiable when it occurs through unavoidable accident. In case of death by railway accident the New York laws at one time limited the damages by death to $5,000, but the present constitution forbids statutory limitation (**129**).

Of other crimes against the person **slander** and **libel** have been described on page 144, and **bigamy** on page 521.

Of crimes against property rights, **larceny** (from Greek *latris*, a hired servant) or **theft** is stealing by stealth. When the value of the goods stolen is less than $25 it is petit larceny (**112**) and a misdemeanor; otherwise grand larceny, and a felony. When the property stolen had been entrusted to the care of the thief, the theft is called **embezzlement. Defalcation** (from Latin *de* and *falx*, a sickle) is a form of embezzlement. **Robbery** is taking property away by force, while to break into a house in the night for purposes of theft or other crime is in itself **burglary.**

Piracy (from Greek *peira*, an attempt) is robbery on the **high seas,** which means the ocean and waters along the coast beyond low-water mark. Congress alone has power to define and punish piracies, felonies, and offences against

the law of nations committed on the high seas (35). The criminal jurisdiction of the states extends only to their borders (67) and there must be some authority to punish offences on the ocean.

Arson (from Latin *ardere*, to burn) is the malicious burning of a building belonging to another. To burn an inhabited dwelling in the night time is arson in the 1st degree, and punishable as murder in the 1st degree (see page 551).

Forgery (from Latin *fabricare*, to fashion) is signing the name of another person to a written instrument or passing off an imitated instrument for an original, or making some alteration in an instrument already signed. **Counterfeiting** (from Latin *contra*, against, and *facere*, to make, originally to make a likeness) is the same sort of fraud applied to coin, to bank-notes, to bonds or other securities, or to articles other than written instruments. Congress is empowered to provide for the punishment of counterfeiting the national coin and securities (31). The courts have construed that this does not deprive the state courts of power to punish the same offence.

A person not present but in any way concerned in the commission of a crime is an **accessory** (from Latin *ad*, toward, and *cedere*, to move), **before the fact**, if he counsels or commands the deed; **after the fact**, if he shelters the offender or aids him to escape.

Attempts to commit crime are commonly nominally punishable as though successful, but usually the sentence is lighter.

Any one who sees a crime committed may **arrest** the offender; but otherwise only an officer provided with a warrant may do so (see page 137).

The judicial system of any state or country extends only over its own territory. A New York sheriff can not arrest a man in New Jersey; an American warrant has no effect in England. So criminals who escape from the state or country against whose laws they have offended would be safe from punishment were it not for **extradition** (from Latin *extra*, outside, and *dare*, to give), the delivery of fugitives from justice to the state whose laws they have offended. If a man has committed murder in New York and crosses the line into Pennsylvania, the governor of New York makes upon the governor of Pennsylvania a **requisition**, a formal demand that the criminal be arrested and held, accompanied by indictment or affidavit charging the criminal with crime. It is the duty of the governor of Pennsylvania to cause the fugitive to be arrested and to deliver him to the accredited officer from New York (**74**).[1]

Between nations extradition occurs only by

[1] U. S. Rev. Stat. § 5278.

express treaty (see page 467).[1] When a treaty of extradition exists with another nation, any subject of that nation charged with any of the crimes named in the treaty may be brought before any United States judge or commissioner or judge of any state court of record (see page 268), and examined. If the evidence seems sufficient to warrant, the prisoner is committed to jail, and a copy of the testimony is sent to the secretary of state, who upon requisition of the foreign authorities will issue a warrant for surrender of the prisoner to such authorities.[2] Treaties of extradition differ in detail; thus French criminals can be extradicted only by act of congress. Deserting seamen may be delivered up under similar conditions.[3]

[1] Kent, i.39 n. [2] U. S. Rev. Stat. § 5270. [3] § 5280.

A CHART

Presenting a tabular view of the eight divisions of Government in the United States, and in England

	LEGISLATIVE	EXECUTIVE	JUDICIAL
DISTRICT (Organized under Statute Law)	Legal Voters at School meetings	TRUSTEE (or Trustees, or Board of Education) Clerk Collector Librarian Treasurer	School Commissioners Superintendent of Public Instruction
TOWN (Organized under Statute Law)	Legal Voters at Town Meetings	CONSTABLES Supervisors Assessors Clerk Collector Highway Commissioners Overseers of the Poor	Justices of the Peace Juries
CITY (Organized under Statute Law)	Common Council	MAYOR	Court of Special Sessions (N.Y. City) City Courts Justices of the Peace Juries
COUNTY (Organized under Statute Law)	Board of Supervisors	SHERIFF Treasurer Clerk Coroners School Commissioners Sup'ts of the Poor	Co. Judge (Special Co. Judge) Surrogate (Special Surrogate) District Attorney Clerk of the Court Juries { Grand / Trial }

STATE (Organized under a Constitution)	Legislature { Senate / Assembly	Governor and State Officers	Court of Appeals Supreme Court Board of Claims Attorney-General Court of Impeachment (Senate and Ct. of Appeals)
U.S. STATES (Organized under a Constitution)	Congress { Senate / House of Representatives	President and Cabinet	Supreme Court Circuit Courts District Courts Court of Claims Attorney-General Court of Impeachment Senate Juries
TERR. (Organized under Statute Law)	Legislature { Council / House of Representatives	Governor Secretary Auditor Treasurer Supt of Common Schools	Supreme Court District Courts Probate Courts (in each County) Justices of the Peace Juries
DIST. OF COL.	No Legislature Elective Franchise abolished in 1874	Commissioners	Supreme Court Juries
ENGLAND (Unwritten Constitution)	Parliament { House of Lords: Spiritual, Temporal / House of Commons	King (or Queen), who rules through the Cabinet or Ministry; namely: Prime Minister or Premier Lord Chancellor Lord Privy Seal President of the Council Home Secretary Chancellor of the Exchequer and others	Court of Chancery Queen's Bench Common Pleas Exchequer High Court of Justiciary Circuit Courts in the Rural Districts

TOWN DIRECTORY.

	Name.	*Term expires.*
Supervisor		
Clerk		
Justices		
Assessors		
Highway Commissioners		
Overseers of the Poor		
Collector		
Constables		
Inspectors of Election		
Sealer of Weights and Measures		

NOTE.—Write the names of town officials in same manner as county.

COUNTY DIRECTORY

	Name	*Term expires.*
Sheriff		
Judge		
Surrogate		
Treasurer		
District Attorney		
Coroners		
Superintendents of the Poor		
Assembly		
School Commissioners		
Loan Commissioners		
Chairman Board of Supervisors		
Clerk Board of Supervisors		
Member House of Representatives		No. dist.
State Senator		No. dist.

NOTE—Write the names of the several officials opposite the titles for reference, changing them as other officials are elected or appointed.

TABLE OF DISTRICTS

unit	*district*	*divided by*	*jurisdict'n*	*page*
nation	circuit court	congress	nation	280
	territories	congress	nation	358
	states	congress	state	359
state	district court	congress	nation	278
	congressional	legislature*	nation	445
	judicial	legislature	state	263
	appellate	legislature	state	271
	assembly	legislature	state	227
	senate	legislature	state	229
	counties	legislature	county	62
county	assembly	legislature	state	227
	commissioner	supervisors	state	73
	cities	legislature	city	101
	villages	legislature	village	87
	towns	supervisors†	town	25
town	election	town board	town	48
	road	highway commissioners	town	42
	school	school commissioner‡	state	74
city	ward	legislature	city	101
village	" **	legislature	village	87

*The number of districts is fixed by congress.

†The legislature may erect new towns (**144**).

‡Supervisor and town clerk are sometimes associated.

**Sometimes.

THE STATES OF THE UNION

States	Electoral Vote	Populati'n 1900	Area Sq. Mi.	Admitted	Origin
1. Delaware	3	184,735	2,050	1789	Original
2. Pennsylvania	34	6,302,115	45,215	1789	"
3. New Jersey	12	1,883,669	7,815	1789	"
4. Georgia	13	2,216,331	59,475	1789	"
5. Connecticut	7	908,420	4,990	1789	"
6. Massachusetts	16	2,805,346	8,315	1789	"
7. Maryland	8	1,188,044	12,210	1789	"
8. South Carolina	9	1,340,316	30,570	1789	"
9. New Hampshire	4	411,588	9,305	1789	"
10. Virginia	12	1,854,184	42,450	1789	"
11. New York	39	7,268,894	49,170	1789	"
12. North Carolina	12	1,893,810	52,250	1789	"
13. Rhode Island	4	428,556	1,250	1790	"
14. Vermont*	4	343,641	9,565	1791	From original territory
15. Kentucky*.	13	2,147,174	40,400	1792	"
16. Tennessee	12	2,020,616	42,050	1796	"
17. Ohio	23	4,157,545	41,060	1803	"
18. Indiana	15	2,516,462	36,350	1816	"
19. Mississippi	10	1,551,270	46,810	1817	"
20. Illinois	27	4,821,550	56,650	1818	"
21. Alabama	11	1,828,697	52,250	1819	"
22. Maine*	6	694,466	33,040	1820	"
23. Michigan	14	2,420,982	58,915	1837	"
24. Wisconsin	13	2,069,042	56,040	1848	"
25. West Virginia*	7	958,800	24,780	1863	"
26. Louisiana	9	1,381,625	24,780	1812	By purchase
27. Florida	5	528,542	58,680	1845	"
28. Arkansas	9	1,311,564	53,850	1836	"
29. Missouri	18	3,106,665	69,415	1821	"
30. Iowa	13	2,231,853	56,025	1846	"
31. Kansas	10	1,470,495	82,080	1861	"
32. Nebraska	8	1,066,300	77,510	1867	"
33. North Dakota	4	319,146	70,795	1889	"
34. South Dakota	4	401,570	77,650	1889	"
35. Montana	3	243,329	146,080	1889	"
36. Wyoming	3	92,531	97,890	1890	"
37. California†	10	1,485,053	158,360	1850	By conquest
38. Nevada	3	42,335	110,700	1864	"
39. Utah	3	276,749	84,970	1896	"
40. Oregon	4	413,536	96,030	1859	By discovery and cession
41. Washington	5	518,103	69,180	1889	"
42. Idaho	3	161,772	84,800	1890	"
43. Minnesota	11	1,751,394	83,365	1858	Mixed
44. Colorado	5	539,700	103,925	1876	"
45. Texas‡	18	3,048,710	265,780	1845	Adm'd republic

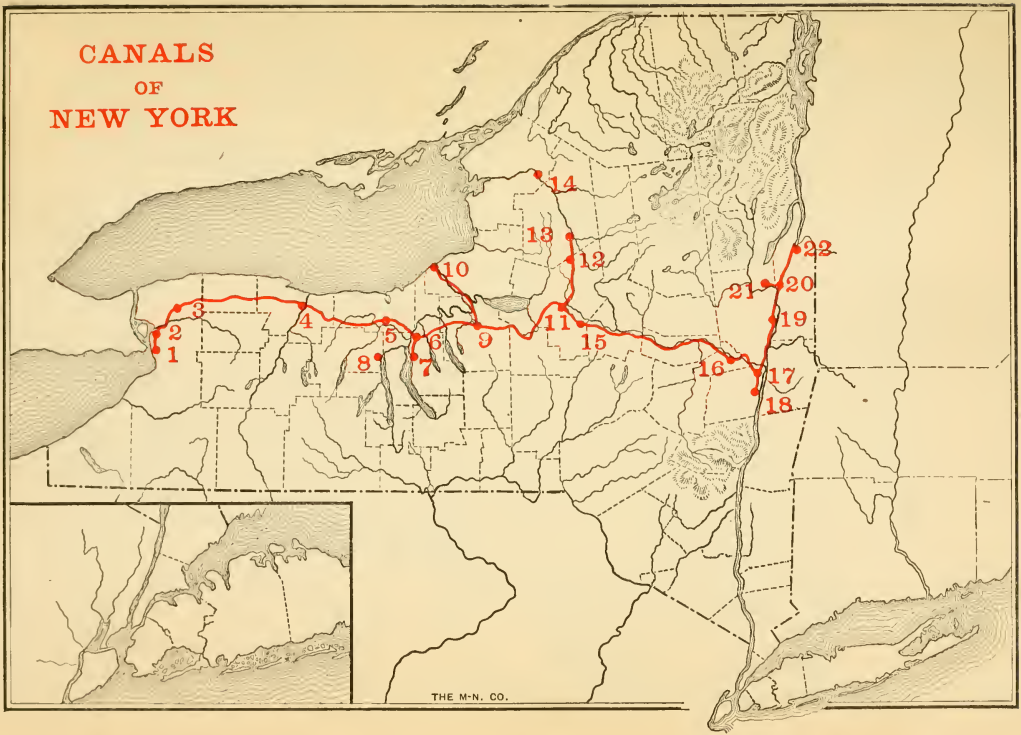
Territories	Populati'n 1900	Area Sq. Mi.	Territories	Populati'n 1900	Area Sq. Mi.
New Mexico	195,310	122,580	Porto Rico	953,243	3,531
Arizona	122,931	113,020	Dist. of Columbia.	278,718	70
Oklahoma	398,331	39,030	Colonies		
Indian	392,060	31,400	Cuba	1,572,797§	45,884
Hawaii	154,001	6,449	Philippine Isl'nds	9,000,000§§	114,361
Alaska	63,592	590,884			

* Formed from other states. † Admitted without having been a territory. ‡ Annexed as a state. All the other new states, 14-45, were territories before being admitted. § 1899. §§ Estimated.

GOVERNORS AND LIEUT. GOVERNORS

GOVERNORS	LIEUTENANT GOVERNORS	
George Clinton	Pierre Van Cortland	1777
John Jay	Stephen Van Rensselaer	1795
George Clinton	Jeremiah Van Rensselaer	1801
Morgan Lewis	John Broome	1804
Daniel D. Tompkins*	De Witt Clinton	1807
	John Taylor	1813
De Witt Clinton	John Taylor	1817
Joseph C. Yates	Erastus Root	1823
De Witt Clinton†	James Tallmadge	1825
	Nathaniel Pitcher	1827
Martin Van Buren‡	Enos T. Throop	1829
Enos T. Throop	Edward P. Livingston	1831
Wm. L. Marcy	John Tracy	1833
Wm. H. Seward	Luther Bradish	1839
Wm. C. Bouck	Daniel L. Dickinson	1843
Silas Wright	Addison Gardiner	1845
John Young	Hamilton Fish	1847
Hamilton Fish	George W. Patterson	1849
Washington Hunt	Sanford E. Church	1851
Horatio Seymour	Sanford E. Church	1853
Myron H. Clark	Henry J. Raymond	1855
John A. King	Henry R. Selden	1857
Edwin D. Morgan	Robert Campbell	1859
Horatio Seymour	David R. Floyd Jones	1863
Reuben Fenton	Thomas G. Alvord	1865
	Stewart L. Woodford	1867
John T. Hoffman	Allen C. Beach	1869
John A. Dix	John C. Robinson	1873
Samuel J. Tilden	Wm. Dorsheimer	1875
Lucius Robinson	Wm. Dorsheimer	1877
Alonzo B. Cornell	George G. Hoskins	1880
Grover Cleveland**	David B. Hill	1883
David B. Hill	Edward F. Jones	1886
David B. Hill	Edward F. Jones	1889
Roswell P. Flower	Wm. F. Sheehan	1892
Levi P. Morton	Charles T. Saxton	1895
Frank S. Black	Timothy L. Woodruff	1897
Theodore Roosevelt	Timothy L. Woodruff	1899
Benjamin B. Odell	Timothy L. Woodruff	1902

* Resigned in 1817; † died in 1828; ‡ resigned in 1829; ** resigned in 1885: in each case the lieutenant governor filled out the term.


CANALS
OF
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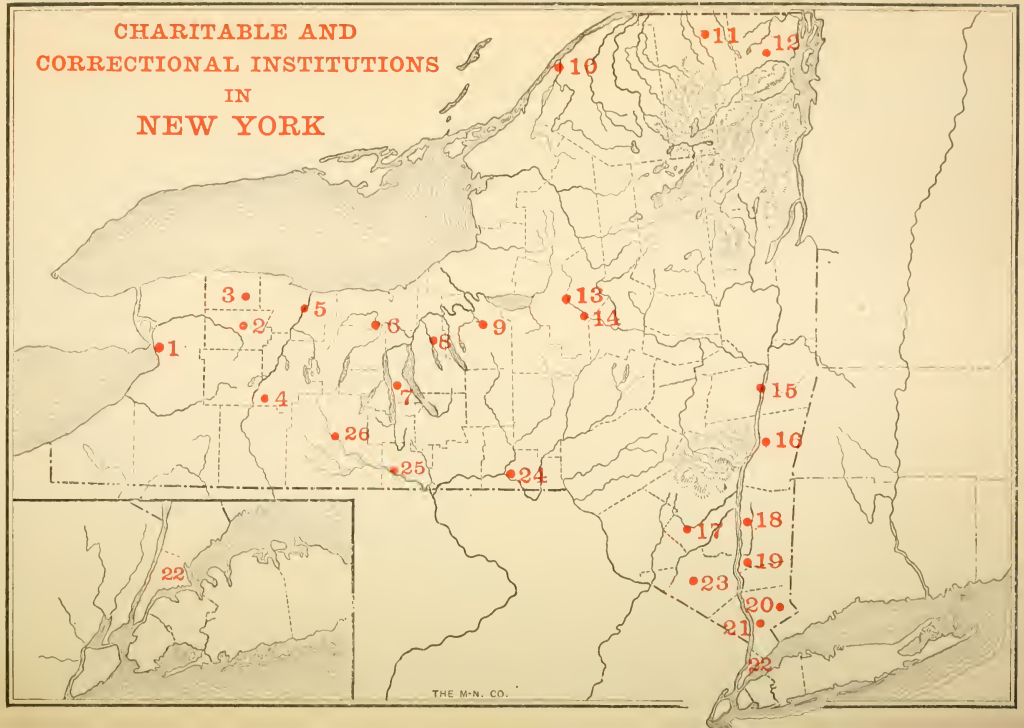
THE M-N. CO.


CHARITABLE AND
CORRECTIONAL INSTITUTIONS
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THE M·N. CO.

NEW YORK STATE OFFICIALS.

ELECTED BY THE PEOPLE

	Term expires.
Governor, Benjamin B. Odell	Dec. 31, 1902
Lieut.-Gov., Timothy L. Woodruff	" " "
Secretary of State, John J. McDonough	" " "
Comptroller, ————	" " "
Treasurer, John B. Jaeckel	" " "
Attorney-General, John C. Davies	" " "
State Engineer, Edward A. Bond	" " "

APPOINTED BY GOVERNOR AND SENATE

	Term expires.
Sup't of Insurance, Francis Hendricks, Syracuse	Feb. 11, 1903
" " Banking, Frederick D. Kilburn, Malone	Mar. 29, 1902
" " Prisons, Cornelius V. Collins, Troy	Apr. 17, 1903
" " Public Works, Charles Spencer Boyd, Brooklyn	Dec. 31, 1903

Health officer of the Port of New York, Alvah H. Doty, $12,500.

CHARITABLE AND CORRECTIONAL INSTITUTIONS.

(*See Map on opposite page.*)

PRISONS

8. Auburn. 12. Dannemora.
21. Sing Sing.

REFORMATORIES.—*For Boys and Men.*

25. Elmira. 17. Napanock.
22. New York (House of Refuge.)
5. Rochester Industrial School.

For Women.

20. Bedford Station.
16. House of Refuge, Hudson.

INSTITUTIONS FOR THE BLIND.

2. Batavia. 22. New York.

INSTITUTIONS FOR DEAF-MUTES.

1. Buffalo. 22. Fordham (N. Y.).
11. Malone. 22. New York.
5. Rochester. 13. Rome.

ASYLUMS FOR THE FEEBLE-MINDED.

9. Syracuse. [Newark.
6. Custodial Asylum for Women,

ASYLUMS FOR THE INSANE.

8. Auburn (Insane Criminals).
19. Matteawan (Insane Criminals.)
24. Binghamton. 1. Buffalo.
23. Middletown (Homeopathic.)
10. Ogdensburg.
7. Ovid (Willard Asylum.)
18. Poughkeepsie.
5. Rochester. 14. Utica.

MISCELLANEOUS.

24. Asylum for Inebriates, Bingham'n
26. Soldiers' and Sailors' Home, Bath.
14. Masonic Home, Utica. [yea.
4. Craig Home for Epileptics, Son-

JUDGES OF THE COURT OF APPEALS. (See page 273)

The Court consists of a Chief Judge and 6 Associate Judges, who hold office 14 years.

NAMES.		TERM EXPIRES.
Alton B. Parker, Chief Judge		1906
John Clinton Gray, Associate		1902
Dennis O'Brien,	"	1903
Edward T. Bartlett,	"	1907
Albert Haight,	"	1908
Celora E. Martin,	"	1909
Irving G. Vann,	"	1910

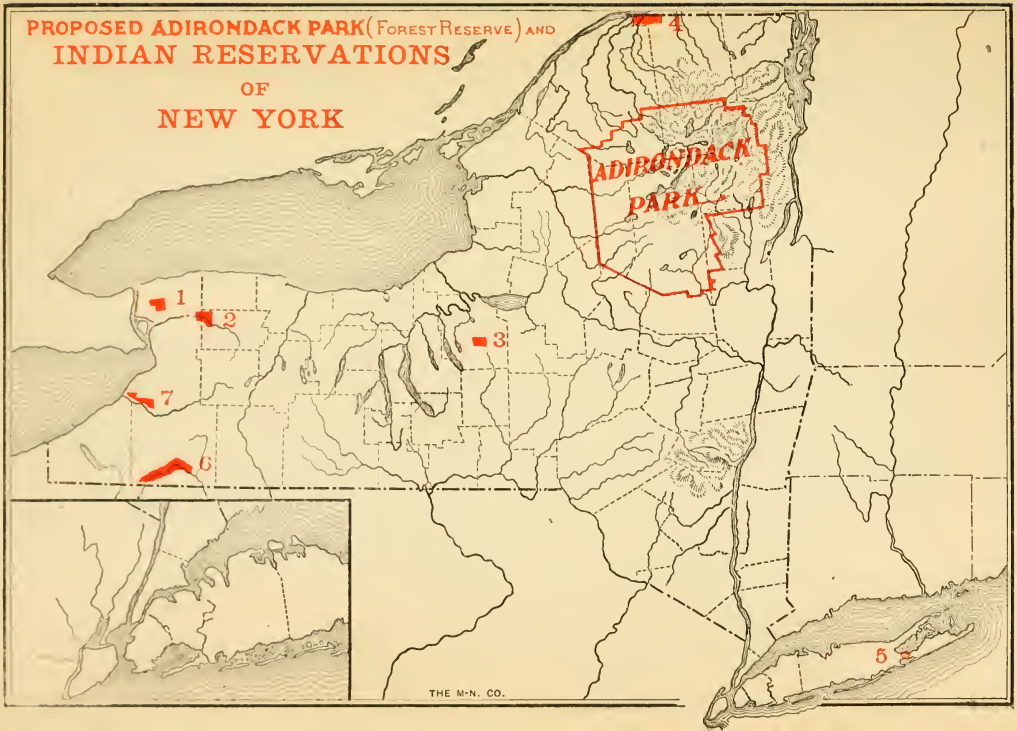
Associate judges, temporarily appointed, according to constitutional amendment adopted by vote of the people, Nov. 7, 1899 (**210**), William E. Werner, Edgar M. Cullen.

The court for the trial of impeachment of State officers is composed of the president of the senate, the senate, and the judges of the court of appeals. See page 230.

INDIAN RESERVATIONS.

(*See Map on opposite page*)

7. Allegany.	3. Onondaga.	5. Shinnecock.	1. Tuscarora.
6. Cattaraugus.	4. St. Regis.	2 Tonawanda.	


PROPOSED ADIRONDACK PARK (FOREST RESERVE) AND
INDIAN RESERVATIONS
OF
NEW YORK
ADIRONDACK
PARK
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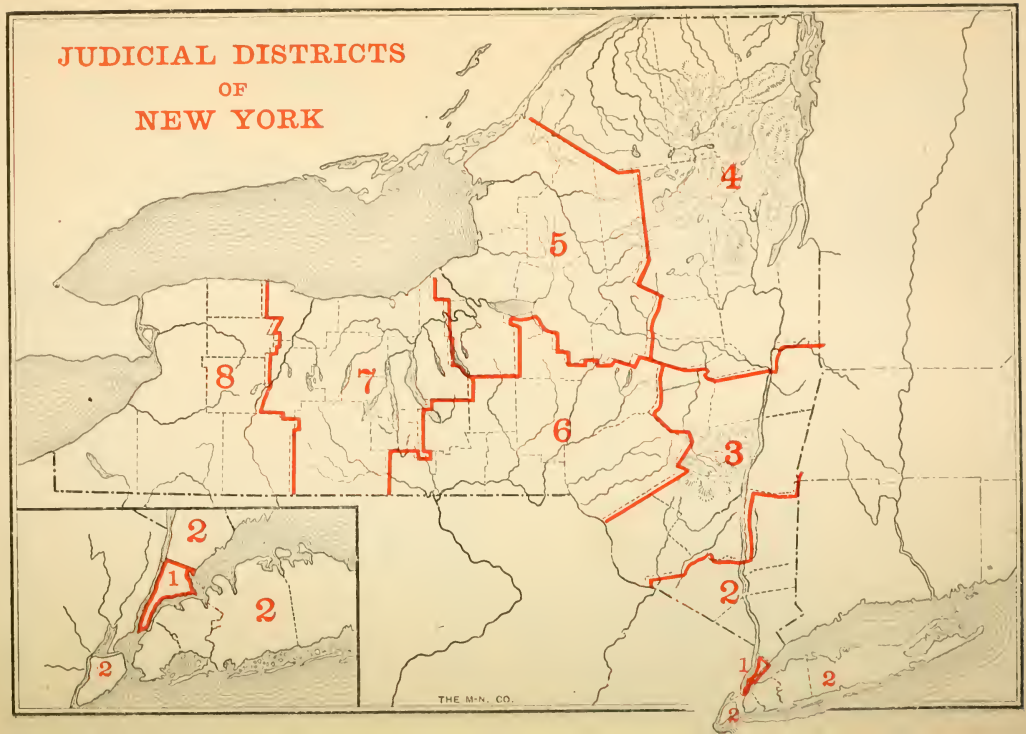
THE M-N. CO.


JUDICIAL DISTRICTS
OF
NEW YORK
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THE M-N. CO.

SUPREME COURT OF NEW YORK. (Pp. 263–271.)

With date of expiration of term of service.

1st. The city and county of New York

Henry Bischoff, jr., N. Y. City	1903		George P. Andrews, N.Y. City		1912
John J. Freedman,	"	1904	James Fitzgerald,	"	1912
	"	1904	David Leventritt,	"	1912
Henry A. Gildersleeve,	"	1905	George C. Barrett,†	"	1913
Geo. L. Ingraham,†	"	1905	James A. O'Gorman	"	1913
Leonard A. Giegerich,	"	1906	Edward Patterson,†	"	1914
Miles Beach,	"	1907	P. Henry Dugro,	"	1914
Charles H. Truax,	"	1909	Morgan J. O'Brien,†	"	1915
Charles F. MacLean,	"	1909	James A. Blanchard,	"	1915
Francis M. Scott,	"	1911	John Proctor Clarke,	"	1915
Charles H. Van Brunt,*	"	1911	Samuel Greenbaum,	"	1915

2d. Rich'd, Suffolk, Orange, Kings, West'r, Queens, Rock'd, Put'm, Dutchess.

William J. Gaynor, Brooklyn	1907	Michael H. Hirschberg,† Newb'g	1910
Edgar M. Cullen,¶ Brooklyn	1908	Garret J. Garretson, Flushing	1910
William D. Dickey, Brooklyn	1909	Samuel T. Maddox, Brooklyn	1910
Wilmot M. Smith, Patchogue	1909	Willard Bartlett,† Brooklyn	1911
Martin J. Keogh, New Rochelle	1909	Joseph T. Marean, Brooklyn	1912
Wm. W. Goodrich,* Brooklyn	1910	Almet F. Jenks, Brooklyn	1912

3d. Columbia, Rensselaer, Sullivan, Ulster, Albany, Greene, and Schoharie.

Edgar L. Fursman, Troy	1903	Emory A. Chase,§ Catskill	1910
D. Cady Herrick,† Albany	1905	James A. Betts	1912
Alden Chester, Albany	1909	Aaron V. S Cochrane, Hudson	1915

4th. Warren, Saratoga, St. Lawrence, Washington, Essex, Clinton, Franklin, Montgomery, Hamilton, Fulton, and Schenectady counties.

S. Alonzo Kellogg † Plattsburgh	1904	Chester B. McLaughlin,‡ P. H'nry	1909
Leslie W. Russell, Canton	1905	Jas. W. Houghton,† Saratoga Spr.	1914
Martin L. Stover, Amsterdam	1905	Edgar A. Spencer, Gloversville	1915

5th. Onondaga, Jefferson, Oneida, Oswego, Herkimer, and Lewis counties.

Milton H. Merwin, Utica	1902	Frank H. Hiscock,† Syracuse	1910
Maurice L. Wright, Oswego	1905	Pardon C. Williams,† Watertown	1911
Peter B. McLennan,† Syracuse	1906	William S. Andrews, Syracuse	1913
William E. Scripture, Rome	1909		

6th. Otsego, Delaware, Madison, Chenango, Tompkins, Broome, Chemung, Schuyler, Tioga, Cortland counties.

Walter Lloyd Smith, Elmira	1902	Albert H. Sewell, Walton	1914
George F. Lyon, Binghamton	1909	Charles E. Parker,* Owego	1915
Burr Mattice, Oneonta	1910	Gerritt A. Forbes, Canastota	1915

7th. Livingston Ontario, Wayne, Yates, Steuben, Seneca, Cayuga, Monroe.

John M. Davy, Rochester	1902	Edwin A. Nash, Avon	1909
John F. Parkhurst, Bath	1908	Adelbert P. Rich, Auburn	1914
Wm. E. Werner,¶ Rochester	1908	Wm. H. Adams,† Canandaigua	1915
James W. Dunwell, Lyons	1909		

8th. Erie, Chaut., Catt., Orleans, Niagara, Genesee, Allegany, Wyoming.

Henry A. Childs, Medina	1901	Alfred Spring,† Franklinville	1909
Warren B. Hooker, Buffalo	1903	John Woodward,‖ Jamestown	1910
Daniel J. Kenefick, Buffalo	1906	Truman C. White	1913
Edward W. Hatch,‖ Buffalo	1909	John S. Lambert, Fredonia	1913
Frank C. Laughlin,‡ Buffalo	1909	Frederick W. Kruse, Olean	1914

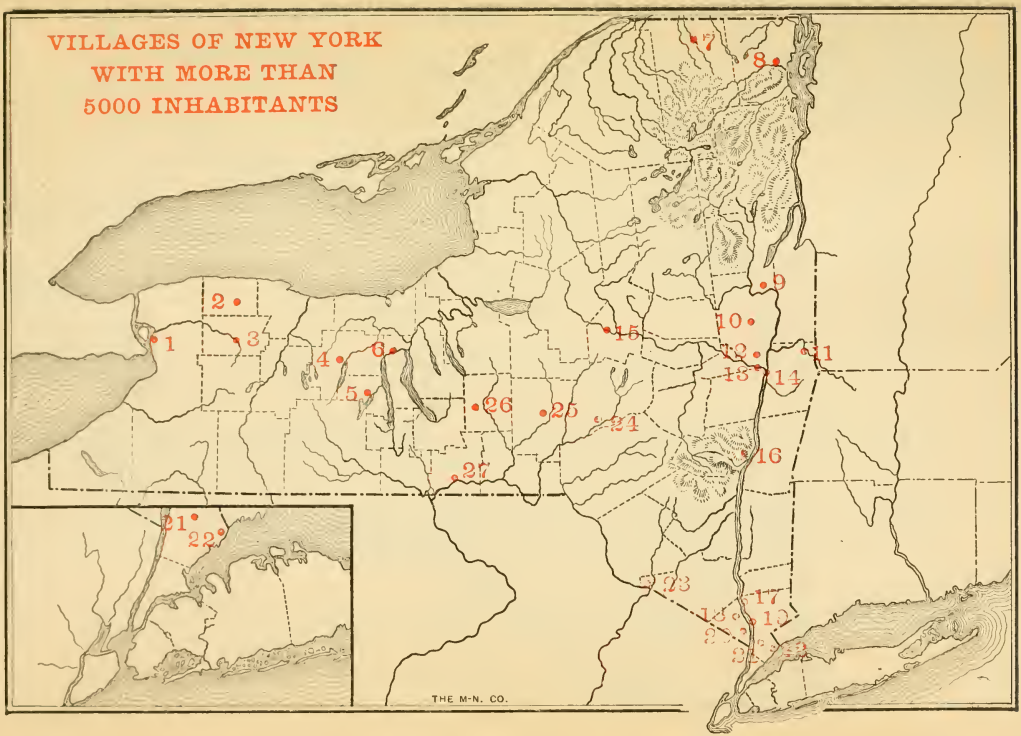
* Presiding Justice, Appellate Division. † Justice of Appellate Division.
‡ Justice of Appellate Division, *1st* Dep't. Ditto, *2d* Dep't. § Ditto, *3d* Dep't.
¶ Temporarily appointed associate judge of the Court of Appeals. See p. vii.

VILLAGES OF NEW YORK

Arranged in order of population by the census of 1900. Small figures show location on the map of villages authorized to appoint a superintendent.

1 Glens Falls[9] 12,613
2 Lansingburg[14] ..12,595
3 Saratoga Springs[10] .. 12,409
4 Peekskill[17] 10,358
5 Port Jervis[23] .. 9,385
6 Batavia[3] 9,180
7 Plattsburg[8] 8,434
8 Sing Sing[19] 7,939
9 White Plains[21] . 7,899
10 Port Chester[22] . 7,440
11 Tonawanda[1] ... 7,421
12 Oneonta[24] 7,147
13 Seneca Falls[6] .. 6,519
14 Canandaigua[4] . 6,151
15 Haverstraw[18] .. 5,935
15 Malone[7] 5,935
17 Matteawan 5,807
18 Norwich[25] 5,766
19 Hoosick Falls[11] 5,671
20 Herkimer[15] 5,555
21 Catskill[16] 5,484
22 Fulton 5,281
23 Ilion* 5,138
24 Owego[27] 5,039
25 Bath 4,994
26 Mamaroneck .. 4,722
27 Green Island .. 4,770
28 Tarrytown 4,770
29 Medina† 4,716
30 Mechanicsville[12] 4,695
31 Penn Yan[5] 4,650
32 Newark 4,578
33 Albion[2] 4,477
34 Sandy Hill 4,473
35 Waverly 4,465
36 Whitehall 4,377
37 Lyons 4,300
38 Nyack[20] 4,275
38 Waterloo 4,275
40 Salamanca 4,251
41 No. Tarrytown. 4,241
42 Fredonia 4,127
43 Ballston Spa 3,923
44 Potsdam 3,843
45 Lancaster 3,750
46 Saugerties 3,697
47 Fishkill Landing 3,673
48 Gouverneur 3,689
49 Dansville 3,633
50 Hempstead 3,582
51 Wellsville 3,556
52 Fort Edward ... 3,521
53 Wappingers Falls 3,504
54 Solvay 3,493
55 Brockport 3,398
56 Depew 3,379
57 Walden 3,147
58 Waterford[13] 3,146
59 Leroy 3,144
60 Lestershire 3,111
61 Warsaw 3,048
62 Canastota 3,030
63 Baldwinsville ... 2,992
64 Watkins 2,943
65 Patchogue 2,926
66 Oswego Falls ... 2,925
67 Carthage 2,895
68 Dobbs Ferry 2,888
69 Ellenville 2,879
70 Goshen 2,826
71 Walton 2,811
72 Perry 2,763
73 Canton 2,757
74 Coxsackie 2,735
75 Granville 2,700
76 Frankfort 2,664
77 Freeport 2,612
78 Saranac Lake . 2,594
79 East Syracuse .. 2,509
80 Clyde 2,507
81 Fairport 2,489
82 Fort Plain 2,444
83 Westfield 2,430
84 Mount Morris ... 2,410
85 Geneseo 2,400
86 Homer 2,381
87 Camden 2,370
88 Cooperstown 2,368
89 East Aurora 2,366
90 Greenport 2,366
91 Lowville 2,352
92 Sidney 2,331
93 Cobleskill 2,327
94 Southampton 2,289
95 Irvington 2,231
96 Athens 2,171
97 Babylon 2,157
98 Gowanda 2,143
99 Keeseville 2,110
100 Canajoharie 2,101
101 Addison 2,080
102 W. Haverstraw. 2,079
103 Delhi 2,078
104 Canisteo 2,077
105 Cold Spring 2,067
106 Deposit 2,051
107 Corinth 2,039
108 Amityville 2,038
109 Massena 2,032
110 Mohawk 2,028
111 So. Glens Falls.. 2,025
112 Chatham 2,018
113 Hastings-on-Hudson 2,002
114 Springville 1,992
115 Sag Harbor 1,969
116 Cornwall 1,966
117 Philmont 1,964
118 Whitesboro 1,958
119 Silver Creek 1,944
120 Palmyra 1,937
121 Oxford 1,931
122 Dresden 1,915
123 Clayton 1,913
124 Ticonderoga 1,911
125 Horseheads 1,901
126 Rockville Ctr... 1,884
127 St. Johnsville... 1,873
128 Greenwich 1,869
129 Rosendale 1,840
130 Cazenovia 1,819
131 Northport 1,794
132 Attica 1,785
133 Elmira Heights. 1,763
134 Liberty 1,760
135 Port Henry 1,751
136 Boonville 1,745
137 Warwick 1,735
138 Norwood 1,714
139 Hamburg 1,683
140 Rouse's Point... 1,675
141 Hamilton 1,627
142 Suffern 1,619
143 Clifton Springs. 1,617
144 Avon 1,601
144 Schuylerville ... 1,601
144 South Nyack 1,601
147 Akron 1,585
148 Cambridge 1,578
149 Waterville 1,571
150 Sea Cliff 1,558
151 North Olean 1,549
152 Richfield Springs 1,537
153 Croton-on-Hudson 1,533
154 Phœnix 1,532
155 Weedsport 1,525
156 Alexandria Bay. 1,511
157 Cuba 1,502
158 Skaneateles 1,495
159 Rhinebeck 1,494
160 Pulaski 1,493
161 Moravia 1,442
162 Middleport 1,431
163 Charlotte 1,400
164 Salem 1,391

* Across the river from 15. † Just east of 2. Lansingburgh is now part of the city of Troy, but its school system is undisturbed.


VILLAGES OF NEW YORK
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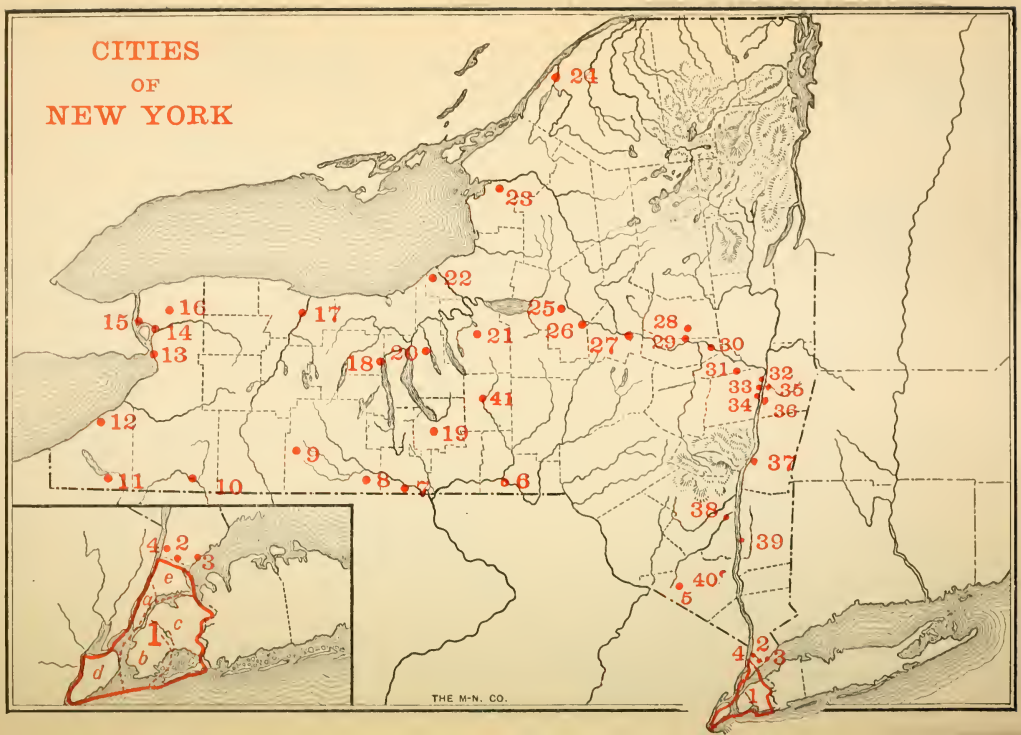
THE M-N. CO.


CITIES
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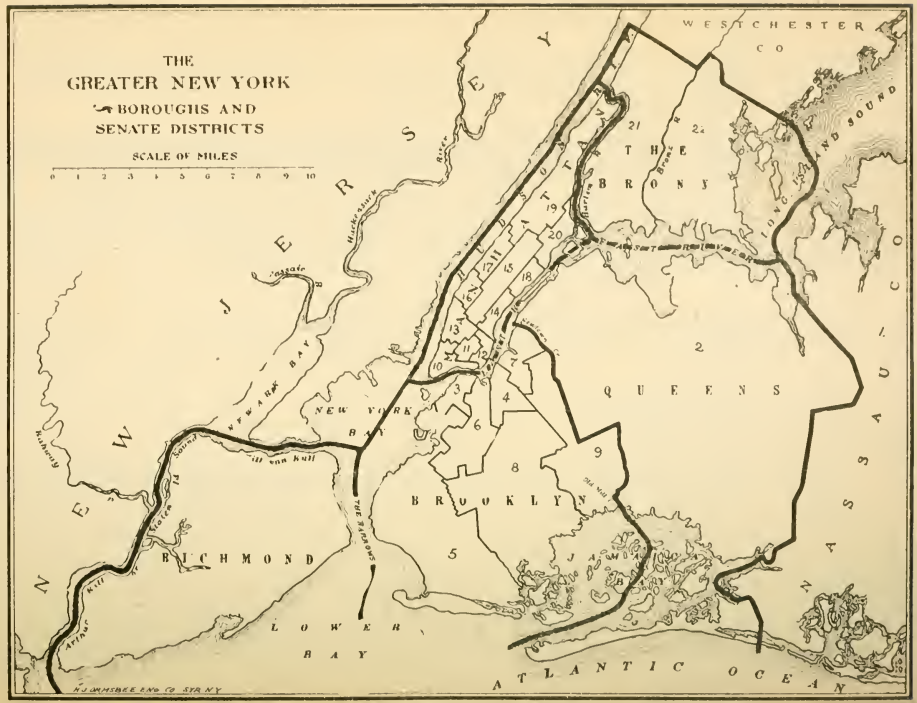
THE M-N. CO.

THE CITIES OF NEW YORK. *See pages 96–117.*

		Date of Incorpor'n	*Pop'n in 1860*	*Pop'n in 1870*	*Pop'n in 1880*	*Pop'n in 1890*	*Pop'n in 1900*	*Rank*
First Class								
1.	New York		1,072,319*	1,338,391*	1,790,091†	2,352,150†	3,437,202	1
Boroughs	Manhattan	1680.	805,658	942,292	1,206,299	1,515,301	1,850,093	
	Bronx						200,507	
	Brooklyn	1834.	266,661	396,099	566,663	806,343	1,166,582	
	Queens	1870			17,190	30,506	152,999	
	Richmond						67,021	
13.	Buffalo	1832.	81,129	117,714	155,134	255,664	352,387	2
Second Class								
7.	Rochester	1834.	48,204	62,386	89,366	133,896	162,608	3
21.	Syracuse	1847.	28,119	43,051	51,792	88,143	108,374	4
34.	Albany	1686.	62,367	69,422	90,758	94,923	94,151	5
35.	Troy‡	1816.	39,235	46,465	56,747	60,956	73,246	6
Third Class.								
26.	Utica	1832.	22,529	28,804	33,914	44,007	56,383	7
4.	Yonkers	1872.	11,848	18,357	18,892	32,833	47,931	8
6.	Binghamton	1867.	8,325	12,692	17,317	32,033	39,647	9
7.	Elmira	1864.	8,682	15,863	20,541	30,893	35,672	10
31.	Schenectady	1798.		11,026	13,655	19,902	31,682	11
20.	Auburn	1848.	10,986	17,225	21,924	25,858	30,345	12
40.	Newburgh	1865.		17,014	18,049	23,087	24,943	13
38.	Kingston	1872.			18,344	21,261	24,535	14
39.	Poughkeepsie	1854.	14,726	20,080	20,207	22,206	24,029	15
32.	Cohoes	1869.	8,800	15,357	19,416	22,509	23,910	16
11.	Jamestown	1886.		5,336	9,357	16,038	22,982	17
22.	Oswego	1848.	16,816	20,910	21,116	21,842	22,199	18
23.	Watertown	1869.	7,567	9,336	10,697	14,725	21,696	19
30.	Amsterdam	1885.		5,426	9,466	17,336	**21,901	20
2.	Mt. Vernon	1892.				10,830	20,346	21
5.	Niagara Falls	1892.					19,457	22
28.	Gloversville	1890.		4,518	7,133	13,864	18,349	23
16.	Lockport	1865.		12,426	13,522	16,038	16,581	24
25.	Rome	1870.	9,289	11,000	12,194	14,991	15,343	25
3.	New Rochelle	1899.				9,057	14,720	26
5.	Middletown	1888.		6,049	8,494	11,977	14,522	27
33.	Watervliet	1897.				12,967	14,321	28
19.	Ithaca	1888.		8,462	9,105	11,079	13,136	29
24.	Ogdensburg	1868.	7,409	10,076	10,341	11,662	12,633	30
9.	Hornellsville	1888.		4,552	8,195	10,906	11,918	31
12.	Dunkirk	1880.			7,248	9,416	11,616	32
8.	Corning	1890.		4,018	4,802	8,550	11,061	33
36.	Rensselaer	1897.				7,301	††10,870	34
18.	Geneva	1897.				7,557	10,433	35
27.	Little Falls	1895.				8,783	10,381	36
29.	Johnstown	1895.				7,768	10,130	37
37.	Hudson	1785.		8,615	8,670	9,970	9,528	38
10.	Olean	1894.				7,358	9,462	39
14.	No. Tonawanda	1897.				4,793	9,069	40
41.	Cortland	1900.				8,590	9,014	41
	Onelda	1901.				6,083	7,738	42

* Including Brooklyn. † Including Brooklyn and Long Island City. ‡ Including Lansingburg, 12,595, annexed 1901. ** Including most of Rockton, 1,052 less 80, annexed 1901. †† Including Bath-on Hudson, 2,504, and part of East Greenbush, 800, annexed 1901.


THE
GREATER NEW YORK
BOROUGHS AND
SENATE DISTRICTS
SCALE OF MILES
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WESTCHESTER
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LONG ISLAND SOUND
THE BRONX
QUEENS
BROOKLYN
RICHMOND
NEW YORK BAY
LOWER BAY
ATLANTIC OCEAN
NASSAU CO
NEW JERSEY
NEWARK BAY
Hackensack
Passaic
Arthur Kill
Kill van Kull
Gowanus
Harlem
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Flushing
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THE NARROWS
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N.J. SIMMSBEE ENG CO. STR. N.Y.

NUMBER OF TOWNS AND CITIES, BY COUNTIES.

[The Counties are numbered according to the map inside first cover.]

		TOWNS.	CITIES.
37.	Albany	9	3
21.	Allegany	29	
16.	Broome	15	1
22.	Cattaraugus	32	1
47.	Cayuga	23	1
23.	Chautauqua	25	2
19.	Chemung	11	1
33.	Chenango	21	
59.	Clinton	14	
14.	Columbia	18	1
32.	Cortland	15	1
16.	Delaware	19	
11.	Dutchess	20	1
24.	Erie	25	1
58.	Essex	18	
60.	Franklin	17	
43.	Fulton	10	2
48.	Genesee	13	
15.	Greene	14	
56.	Hamilton	8	
43.	Herkimer	19	1
55.	Jefferson	22	1
5.	Kings*	4*	(1*)
54.	Lewis	18	
26.	Livingston	17	
45.	Madison	14	1
51.	Monroe	19	1
42.	Montgomery	10	1
2.	Nassau	3	
6.	New York		1
49.	Niagara	12	3
44.	Oneida	26	2
46.	Onondaga	19	1
27.	Ontario	16	1
9.	Orange	18	2
50.	Orleans	10	
53.	Oswego	21	1
34.	Otsego	24	
10.	Putnam	6	
3.	Queens		(1*)
38.	Rensselaer	16	2
5.	Richmond*		(1*)
8.	Rockland	5	
61.	St. Lawrence	31	1
40.	Saratoga	20	
36.	Schenectady	5	1
35.	Schoharie	16	
30.	Schuyler	8	
29.	Seneca	10	
20.	Steuben	32	2
1.	Suffolk	10	
13.	Sullivan	15	
18.	Tioga	9	
31.	Tompkins	9	1
12.	Ulster	20	1
57.	Warren	11	
39.	Washington	17	
52.	Wayne	15	
7.	Westchester	21	3
25.	Wyoming	16	
28.	Yates	9	
		929	42

* Now part of New York City.

DEPARTMENT OF PUBLIC INSTRUCTION.

Superintendent, Charles R. Skinner, Albany..... .....$5,000
Deputy, Danforth E. Ainsworth, Albany..... 4,500
Second Deputy, Arthur M. Wright, Albany.. 4,000

Heads of Sub-Departments.

Law, Edwin M. Holbrook
Examination, Thomas E. Finegan, $3,000
Finance, DeLancey M. Ellis, $2,400
Statistics, Hiram C. Case, $2,100
Institute, Isaac H. Stout, $4,000
Train'g class, Frank H. Wood, $3,500
Library, L. O. Wiswell, $2,400
Compulsory attendance, James D. Sullivan, $3,000

Institute Conductors, each $3,000.

Henry R. Sanford, Ph.D., Penn Yan
Sherman Williams, Ph.D., Glens Falls
Charles A. Shaver, Watertown
Irving B. Smith, A.M., Warsaw
Philip M. Hull, A.M., Clinton

Special Instructor in Drawing.
Miss Gratia L. Rice, Buffalo, $2,200

In Nature Study (paid by Cornell Un.)
Mrs. Mary Rogers Miller, Ithaca, $1,600

In English, Sara A. Collier, Oneonta, $1,200.

In Primary Work, Mae E. Schrieber, $2,000.

Lecturer, Charles E. Fitch, Rochester, $2,500

Training School and Class Inspectors, each $2,500.

S. Whitford Maxson, Adams Centre
John C. Bliss, Gouverneur
Willis D. Graves, Ithaca
Albert C. Hill, Albany

Compulsory Attendance Inspectors, each $2,500

A. Edson Hall, Saratoga Springs
John J. N. Symes, New York
Wm. J. Barr, Batavia

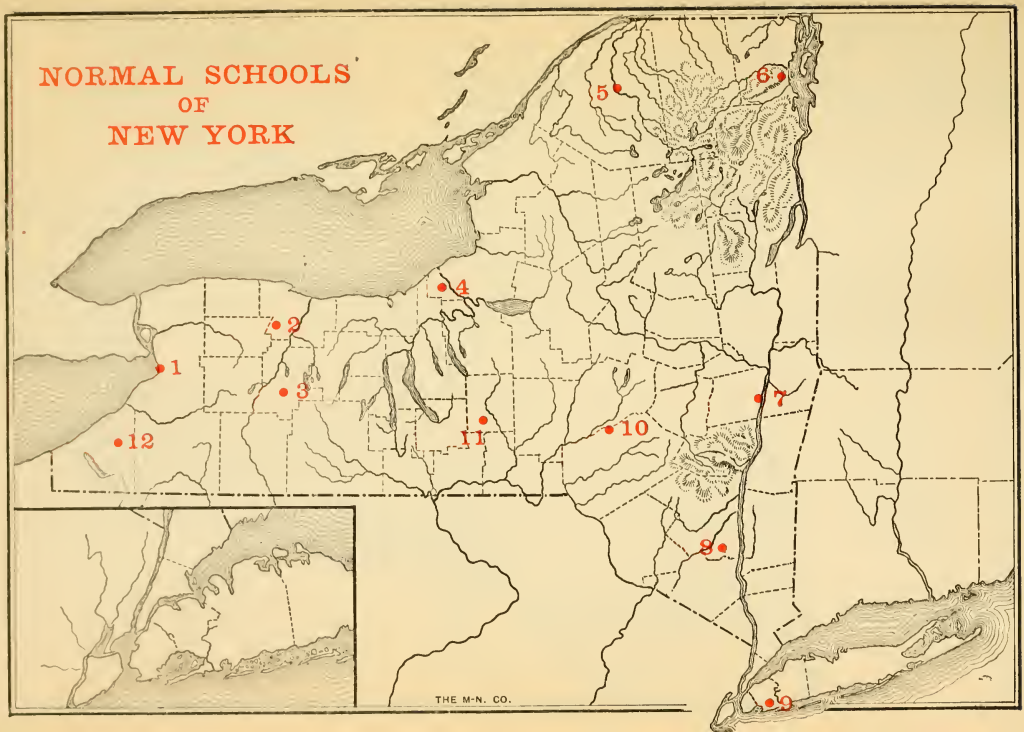
Inspector of Normal Schools, Charles T. Andrews, Seneca Falls.

PRINCIPALS OF THE STATE NORMAL SCHOOLS.

As numbered on the Map on opposite page

7.	Albany Normal College.....	William J. Milne....	$4,000
2.	Brockport.....	C. F. McFarlane....	3,000†
1.	Buffalo.....	James M. Cassety...	3,000†
11.	Cortland.....	Francis J. Cheney...	3,300
12.	Fredonia..	F. B. Palmer.....	3,000†
3.	Geneseo.....	John M. Milne.....	3,300
9.	Jamaica....	A. C. McLachlan....	3,300
8.	New Paltz.....	Myron E. Scudder...	3,300
10.	Oneonta.....	Percy I. Bugbee.....	3,300
4.	Oswego.....	Isaac B. Poucher...	3,300
6.	Plattsburgh.....	Geo. W. Hawkins...	3,300
5.	Potsdam.....	Thos. B. Stowell ...	3,000†

† Besides residence furnished by the State.


NORMAL SCHOOLS
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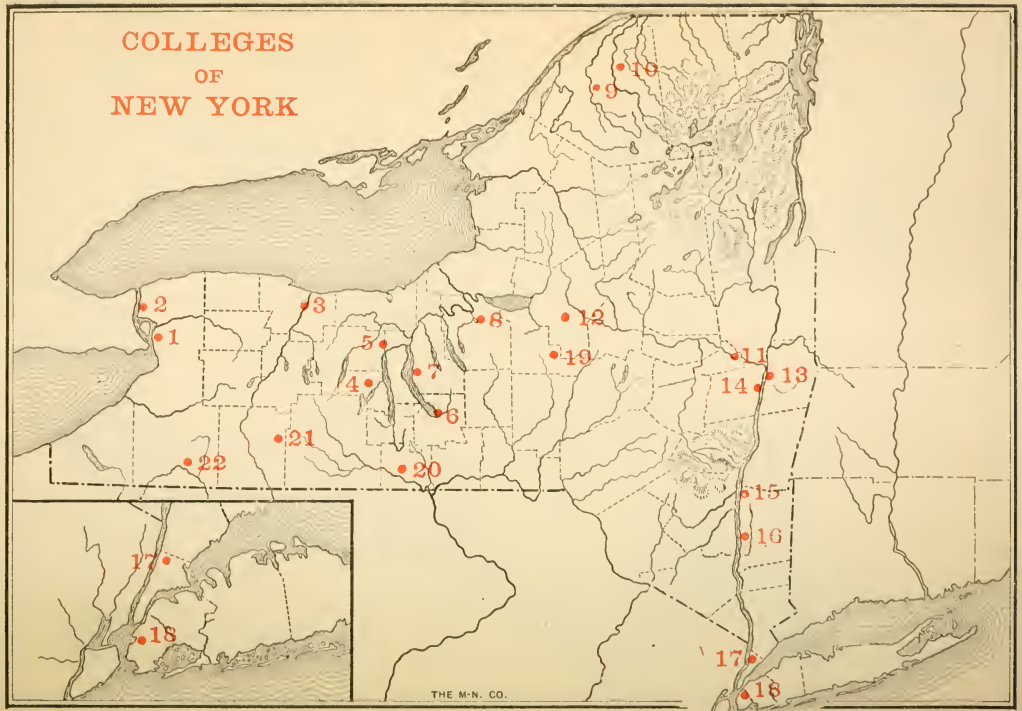
THE M-N. CO.


COLLEGES
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THE M-N. CO.

REGENTS OF THE UNIVERSITY.

The Governor, *ex-officio*.
The Lieutenant-Governor, *ex-officio*.
1873. Martin I. Townsend.....Troy
1874. Anson J. Upson.....Glens Falls
1877. Chauncey M. Depew..New York
1877 Charles E. Fitch.....Rochester
1878. Whitelaw Reid... ...New York
1881. Wm. H. Watson,..... .Utica
1881. Henry E. Turner.....Lowville
1883. St. Clair McKelway...Brooklyn
1885. Daniel Beach..... .....Watkins
1888. Carroll E. Smith.....Syracuse
The Secretary of State, *ex-officio*.
The Sup't of Pub. Instruction, *ex-offico*.
1890. Pliny T. Sexton.....Palmyra
1890. T. Guilford Smith.. ....Buffalo
1892. Wm. Croswell Doane...Albany
1893. Lewis A. Stimson....New York
1895. Albert Vander Veer.....Albany
1897. Chester S. Lord..... New York
1900. Thomas Hendrick....Rochester
1901. Robert C. Pruyn.....Albany
1902.

OFFICERS OF THE BOARD OF REGENTS.

	Salaries.
Chancellor, Anson J. Upson, Glens Falls	None
Vice-Chancellor, Wm. Croswell Doane, Albany	None
Secretary, James Russell Parsons, Jr	$5,750
Director's Assistant, Henry L. Taylor	1,800
Director of State Library, Melvil Dewey, Albany	5,750
Senior Librarian, Walter S. Briscoe	2,400
Education Librarian, May Seymour	2,100
Library Inspector, Wm. R. Eastman	2,400
Director of State Museum and Geologist, F. J. H. Merrill	3 000
Palaentologist, John M. Clarke	3,000
Botanist, Charles H. Peck	2,400
Entomologist, Ephraim P. Felt	1,8 0
Examiner in Drawing, Ella L. Richardson	1,200
Head Inspector, Charles F. Wheelock	3,600
Inspectors, Charles N. Cobb, $2,720; Arthur G. Clement, $2,720 Charles Davidson, $2,640; E. W. Lyttle, $2,400; S. Dwight Arms, $2,400; Ezra J. Peck, $2,400; I. O. Crissy, $1,920.	
Apparatus Inspectors, James H. Gibson, F. M. Baker	$1,260

COLLEGES

(*See Map on opposite page.*)

18. Adelphi College, Brooklyn, 1896.
21. Alfred Univ., Alfred Centre, 1857.
17. Barnard College, New York, 1889.
1. Canisius College, Buffalo, 1883.
10. Clarkson School of Technicology, Potsdam.
19. Colgate Univ., Hamilton, 1846.
17. College of St. Francis Xavier, New York, 1861.
17. College of the City of N. Y., 1854.
17. Columbia Univ., New York, 1754.
6. Cornell University, Ithaca, 1865.
20. Elmira College, Elmira, 1855.
12. Hamilton College, Clinton, 1812.
5. Hobart College, Geneva, 1825.
17. Manhattan College, N. Y., 1863.
2. Niagara Univ., Niagara Falls, 1883.
17. Normal College of the City of New York 1888.
18. Polytechnic Institute of Brooklyn, 1869.
13. Rensselaer Polytechnic Institute, Troy, 1824.
22. St. Bonaventure's College, Allegany, 1875.
18. St. Francis's Cl., Brooklyn, 1884.
18. St. John's Cl., Brooklyn, 1871.
17. St. John's Cl., Fordham, 1846.
9 St. Lawrence Univ., Canton, 1856.
15. St. Stephen's College, Anandale, 1860.
8 Syracuse Univ., Syracuse, 1870.
17. Teachers' Cl., New York, 1887.
11. Union Cl., Schenectady, 1795.
17. New York University, 1831.
3. Univ. of Rochester, Rochester. 1851.
16. Vassar Cl., Poughkeepsie, 1861.
7. Wells College, Aurora, 1886.

SENATE.—Elected by the people. See page 229.

Term expires Dec. 31, 1902.

President.....Timothy L. Woodruff.

President *pro tem*.....T. E. Ellsworth.

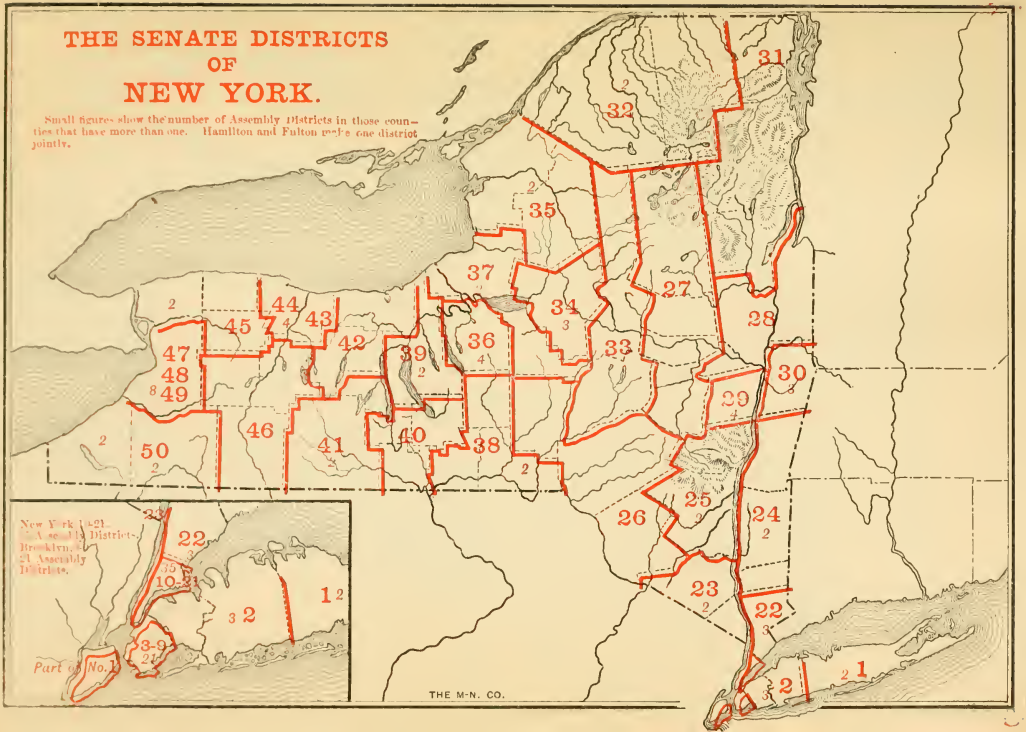
Dist.		*Dist.*	
1.	William M McKinney,	26.	Wm. L. Thornton,*
2.	William Willets Cocks,	27.	Hobart Krum,*
3.	Thomas H. Cullen,* †	28.	Edgar T. Brackett,*
4.	Arthur H. Audett,	29.	James B McEwan,
5.	James H McCabe,†	30.	William D. Barnes,
6.	Rudolph C. Fuller,	31.	Spencer G. Prime,
7.	Patrick H. McCarren,* †	32	George R. Malby,*
8.	Henry Marshall,*	33.	Jas. D. Feeter,*
9.	William Schnitzspan,	34.	G. A. Willard,
10.	John F. Ahearn,* †	35.	Elon R. Brown,*
11.	Timothy D. Sullivan,* †	36.	Horace White,*
12.	Samuel J. Foley,* †	37.	N. N. Stranahan,*
13.	Bernard F. Martin,* †	38.	George E. Green,
14.	Thomas F. Grady,* †	39.	Benjamin M. Wilcox,*
15.	Nathaniel A. Elsberg,*	40.	Edwin C Stewart,
16.	Patrick E. Trainor,†	41.	F. D. Sherwood,*
17.	George W. Plunkitt,* †	42.	John Raines,*
18.	Victor J. Dowling,†	43.	Morton E. Lewis,
19.	Samuel S. Slater,	44.	W. W. Armstrong,*
20.	Thomas F. Donnelly,* †	45.	T. E. Ellsworth,*
21.	Joseph P. Hennessy,†	46.	L. H. Humphrey,*
22.	Isaac M. Mills,	47.	Henry W. Hill,
23.	L. F. Goodsell,*	48.	Samuel J. Ramsperger,* †
24.	H. S. Ambler,*	49.	George A. Davis,*
25.	W. S. C. Wiley,	50.	Frank W. Higgins,*

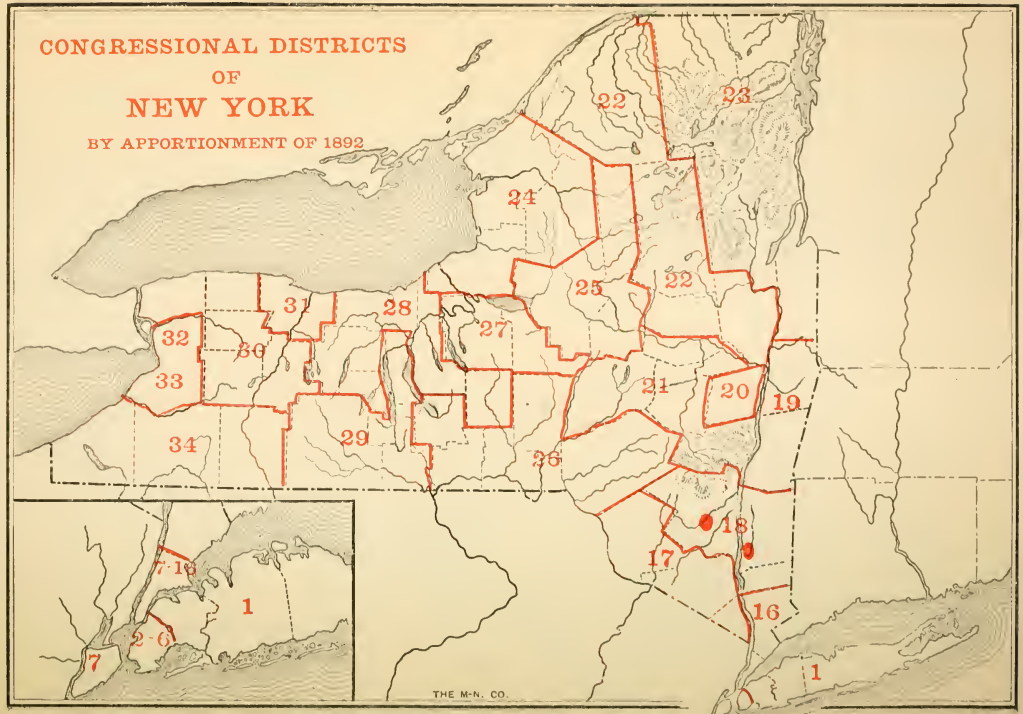
* Re-elected. † Democrats. All others republicans.

Apportionment of Assembly by Counties. 1894

Broome, Cattaraugus, Cayuga, Chautauqua, Dutchess, Jefferson, Niagara, Orange, Oswego, St. Lawrence, Steuben, Suffolk, and Ulster counties have each 2 districts; Oneida, Queens, Rensselaer, and Westchester have 3; Albany, Monroe, and Onondaga have 4; Erie has 8; Kings has 21; New York has 35. All the other counties form one district each, except Fulton and Herkimer, which form one jointly. See page 227.

Speaker of Assembly of 1902...S. Frederick Nixon, Chautauqua.


THE SENATE DISTRICTS
OF
NEW YORK.
Small figures show the number of Assembly Districts in those counties that have more than one. Hamilton and Fulton make one district jointly.
New York has 21 Assembly Districts. Brooklyn has 21 Assembly Districts.
Part of No. 1
THE M-N. CO.


CONGRESSIONAL DISTRICTS
OF
NEW YORK
BY APPORTIONMENT OF 1892
22
23
24
25
22
31
28
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30
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21
20
19
34
29
26
18
17
16
1
7
2
6
1
THE M-N. CO.

NEW YORK REPRESENTATIVES IN THE 57TH CONGRESS.

Term begins March 4, 1901; ends March 3, 1903.

Speaker.....David B. Henderson, Iowa.

(For Districts, see map on opposite page.)

Dist.		*Dist.*	
1.	F. Storm	18.	John Henry Ketcham,† ‡
2.	John J. Fitzgerald,†	19.	W H. Draper,
3.	Henry Bristow,	20	G. N. Southwick,
4.	H. A Hanbury,	21.	John K. Stewart,†
5.	Frank F. Wilson,†	22.	Lucius N. Littauer,† ‡
6.	G. Lindsay,	23.	Louis W. Emerson,†
7.	————————	24.	Chas. L. Knapp,
8	T J Creamer,	25.	James S. Sherman,*†‡
9	H M Goldfogle,†	26.	George W. Ray,* †‡
10.	Amos J. Cummings,* †‡	27.	Michael E. Driscoll,†
11.	William Sulzer,* †‡	28.	Sereno E. Payne,* †‡
12.	Geo. B. McClellan,* †‡	29.	Charles W. Gillet,*†‡
13	O. H P Belmont,	30.	James W. Wadsworth,*†‡
14.	W. H Douglas,	31.	J B Perkins,
15.	Jacob Ruppert, jr.,†	32	J. W. Ryan,
16	C A. Pugsley,	33.	Col. D. S. Alexander, †‡
17.	A. S. Tompkins, †	34.	E. B. Vreeland.†

* Served in 54th Congress. ‡ Served in 55th Congress.
† Served in 56th Congress.

NEW YORK SENATORS IN THE 57TH CONGRESS.

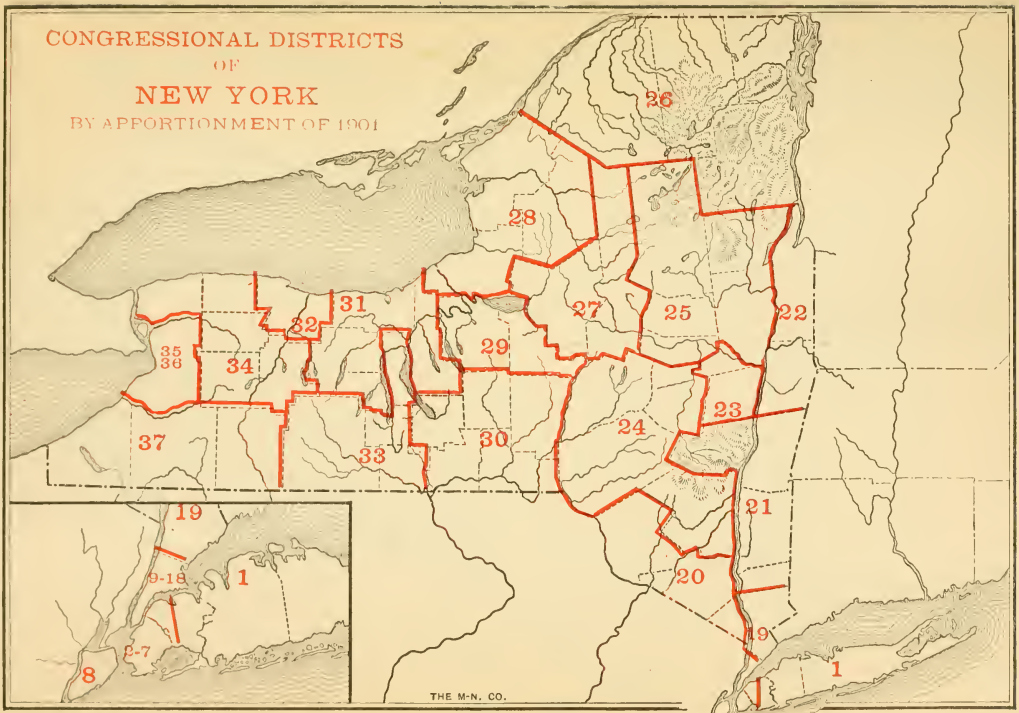
(See list on page 461.)

Thomas C. Platt. Chauncey M. Depew.

President *pro tem.* of the Senate, William C. Frye, of Maine

NOTE

The New York members of the present (57th) congress are elected by the congressional districts as laid out in 1892 (page 582). Those in the 58th congress will be elected by the districts on the opposite page.


CONGRESSIONAL DISTRICTS
OF
NEW YORK
BY APPORTIONMENT OF 1901
26
28
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25
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29
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9-18
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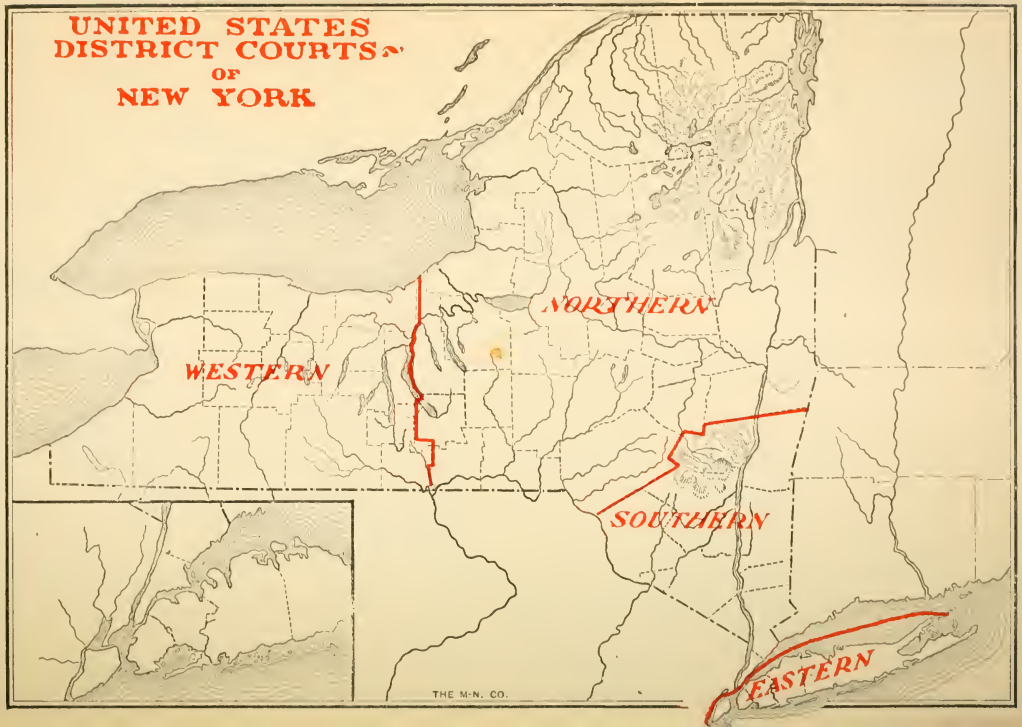
2-7
8
9
1
THE M-N. CO.


UNITED STATES
DISTRICT COURTS
OF
NEW YORK
NORTHERN
WESTERN
SOUTHERN
EASTERN
THE M·N. CO.

CHIEF JUSTICES OF THE SUPREME COURT.

1. John Jay, of New York.....1789–1795.
2. John Rutledge, of South Carolina..... 1795.
3. Oliver Ellsworth, of Connecticut.....1796–1800.
4. John Marshall, of Virginia.....1800–1835.
5. Roger B. Taney, of Maryland.....1836–1864.
6. Salmon P. Chase, of Ohio.....1864–1873.
7. Morrison R. Waite, of Ohio.....1874–1888.
8. Melville W. Fuller, of Illinois.....1888–

UNITED STATES SUPREME COURT. (See pp. ——.)

CHIEF JUSTICE.

Melville W. Fuller.....appointed 1888.

ASSOCIATE JUSTICES.

John M. Harlan.....appointed 1877.
Horace Gray..... " 1881.
David J. Brewer..... " 1889.
Henry B. Brown..... " 1890.
George Shiras, jr..... " 1892.
Edward Douglas White..... " 1894.
Rufus W. Peckham..... " 1895.
Joseph McKenna..... " 1897.

UNITED STATES COURTS. (See pages 278–281.)

New York is in the 2d Circuit, comprising also Connecticut and Vermont. The New York judges of the circuit court are William J. Wallace, E. Henry Lacombe; of the district courts, John R. Hazel, Buffalo; Alfred C. Coxe, Utica; Geo. Bethuus Adams, New York; and Edward B. Thomas, Brooklyn. Her United States district attorneys are Charles H. Brown, Buffalo; Geo. B. Curtiss, Binghamton; Henry L. Burnett, New York; George H. Pettit, Brooklyn.

PRESIDENTIAL VOTE, FROM 1789 TO DATE.

INAUGURATED.	CANDIDATES.	PARTY.	POPULAR VOTE.	ELECTORS.
1789	George Washington	.....	Elec. chosen by Legislature.	Unan
1797	John Adams	Fed...	" " "	71
	Thomas Jefferson	Dem..	" " "	69
1801	Thomas Jefferson	Dem..	Election went to H. of R.,	73
	Aaron Burr	Dem..	and Jefferson was elected	73
	John Adams	Fed...	on the 36th ballot.	65
1805	Thomas Jefferson	Dem..	Elec. chosen by Legislature.	148
	C. C. Pinckney	Fed...	" " "	28
1809	James Madison	Dem..	" " "	122
	C. C. Pinckney	Fed...	" " "	47
1813	James Madison	Dem..	" " "	128
	De Witt Clinton	Fed...	" " "	89
1817	James Monroe	Dem..	" " "	183
	Rufus King	Fed...	" " "	34
1821	James Monroe	Dem..	But 1 electoral vote in op...	
1825	J. Q. Adams	Fed...	105,321. Elec. by H. of R.	84
	Andrew Jackson	Dem..	155,872	99
	W. H. Crawford	Dem..	44,282	41
	Henry Clay	Whig .	46,587	37
1829	Andrew Jackson	Dem..	647,231	178
	J. Q. Adams	Fed...	509,097	83
1833	Andrew Jackson	Dem..	687,502	219
	Henry Clay	Whig .	530,189	49
	John Floyd	Whig .	Not known	11
	William West	Whig .	"	7
1837	Martin Van Buren	Dem..	761,549	170
	William H. Harrison	Whig .	736,656	121
1841	William H. Harrison	Whig .	1,275,011	234
	Martin Van Buren	Dem..	1,135,761	66
1845	James K. Polk	Dem..	1,337,243	170
	Henry Clay	Whig .	1,361,362	105
1849	Zachary Taylor	Whig .	1,360,099	163
	Lewis Cass	Dem..	1,220,544	127
	Martin Van Buren	Dem..	291,263	
1853	Franklin Pierce	Dem..	1,601,474	254
	Winfield Scott and others	Whig .	1,542,403	42
1857	James Buchanan	Dem..	1,838,169	174
	John C. Fremont and others	Rep...	2,215,798	122
1861	Abraham Lincoln	Rep...	1,866,352	180
	J. C. Breckenridge and others	Dem..	2,810,501	123
1865	Abraham Lincoln	Rep...	2,216,067	213
	Geo. B. McClellan	Dem..	1,808,725	21
1869	Ulysses S. Grant	Rep...	3,015,071	214
	Horatio Seymour	Dem..	2,709,613	80
1873	Ulysses S. Grant	Rep...	3,597,070	300
	Horace Greeley	L. & D.	2,834,079	66

INAUGURATED.	CANDIDATES.	PARTY.	POPULAR VOTE.	ELECTORS.
1877	Rutherford B. Hayes	Rep.	4,049,096	185
	Samuel J. Tilden	Dem.	4,315,801	184
	Peter Cooper	G'b'k.	81,907	
1881	James A. Garfield	Rep.	4,450,921	214
	Winfield S. Hancock	Dem.	4,447,888	155*
	J. B. Weaver	G'b'k.	307,740	
1885	Grover Cleveland	Dem.	5,874,118	219
	James G. Blaine	Rep.	4,849,850	182
	Benjamin F. Butler	G'b'k.	184,948	
	John P. St. John	Pro.	149,326	
1889	Benjamin Harrison	Rep.	5,439,853	233
	Grover Cleveland	Dem.	5,540,329	168
	Clinton B. Fisk	Pro.	249,506	
	Scattering		151,344	
1893	Grover Cleveland	Dem.	5,556,562	277
	Benjamin Harrison	Rep.	5,162,874	145
	James B. Weaver	Peop.	1,055,424	22
	John Bidwell	Pro.	264,066	
1897	William McKinley	Rep.	7,121,342	271
	William J. Bryan	Dem.	6,502,600	176
	John M. Palmer	N. Dem	134,731	
	Joshua Levering	Pro.	123,428	
	Charles H. Matchett	Soc. L.	35,306	
	Charles E. Bentley	Nat.	13,535	
1901	William McKinley	Rep.		292
	William J. Bryan	Dem.		155

* Including Georgia's votes, not counted.

NOTE.—The one vote in 1821 was cast for John Quincy Adams by an elector from New Hampshire.

PRESIDENT ROOSEVELT'S CABINET

(See pp. 390–427.)

Secretary of State.....John Hay, Ohio.

Secretary of Treasury....Leslie M. Shaw, Iowa.

Secretary of War.....Elihu Root, New York

Secretary of Navy.....John D. Long, Mass.

Secretary of Interior....Ethan Allen Hitchcock, Mo.

Postmaster General.....Henry C. Payne, Wis.

Attorney General.....Philander C. Knox, Pa.

Secretary of Agriculture.James Wilson, Iowa.

DECLARATION OF INDEPENDENCE

In Congress, July 4, 1776

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA

When, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government; laying its foundation on such principles, and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate, that governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute depotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these

colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws, the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature, a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining, in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices; and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of and superior to the civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these states:

For cutting off our trade with all parts of the world:

For imposing taxes on us without our consent:

For depriving us, in many cases, of the benefits of trial by jury:

For transporting us beyond seas to be tried for pretended offences:

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies:

For taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments:

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation and tyranny, already begun, with circumstances of cruelty and perfidy, scarcely parallelled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, *free and independent states;* that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved; and that as *free and independent states*, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which *independent states* may of right do. And for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

John Hancock, and 54 other signers.

ARTICLES OF CONFEDERATION AND PERPETUAL UNION BETWEEN THE STATES (1776–78)

ARTICLE I.—The style of this confederacy shall be, "The United States of America" (1).*

ART. II.—Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this confederation expressly delegated to the United States in congress assembled (93).

ART. III.—The said states hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever (1).

ART. IV.—The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states—paupers, vagabonds, and fugitives from justice, excepted—shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively; provided that such restriction shall not extend so far as to prevent the removal of property, imported into any state, to any other state of which the owner is an inhabitant; provided also that no imposition, duties, or restriction shall be laid by any state on the property of the United States, or either of them (73, 52).

If any person be guilty of or charged with treason, felony, or other high misdemeanor, in any state, shall flee from justice, and be found in any of the United States, he shall, upon demand of

* Figures at the end of the paragraphs refer to corresponding paragraphs of the national constitution.

the governor or executive power of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence (74).

Full faith and credit shall be given in each of these states to the records, acts, and judicial proceedings of the courts and magistrates of every other state (72).

ART. V.—For the more convenient management of the general interest of the United States, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in congress on the 1st Monday in November in every year, with a power reserved to each state to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year (2, 16).

No state shall be represented in congress by less than 2 nor by more than 7 members; and no person shall be capable of being a delegate for more than 3 years in any term of 6 years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind (3–20).

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states (21).

In determining questions in the United States in congress assembled, each state shall have one vote (17).

Freedom of speech and debate in congress shall not be impeached or questioned in any court, or place out of congress; and the members of congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on, congress, except for treason, felony, or breach of the peace (21).

ART. VI.—No state, without the consent of the United States in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with, any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state;

nor shall the United States in congress assembled, or any of them, grant any title of nobility (51, 50, 28).

No two or more states shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States in congress assembled; specifying accurately the purposes for which the same is to be entered into, and how long it shall continue (51).

No state shall lay any imposts or duties which may interfere with any stipulations in treaties entered into by the United States in congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by congress to the courts of France and Spain (52).

No vessels-of-war shall be kept up in time of peace by any state, except such number only as shall be deemed necessary, by the United States in congress assembled, for the defence of such state or its trade; nor shall any body of forces be kept up by any state in time of peace, except such number only as, in the judgment of the United States in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and constantly have ready for use in public stores a due number of field-pieces and tents, and a proper quantity of arms, ammunition, and camp equipage (52, 41).

No state shall engage in any war without the consent of the United States in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay till the United States in congress assembled can be consulted; nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the United States in congress assembled, unless such state be infested by pirates; in which case vessels-of-war may be fitted out for that occasion, and kept so long as the danger shall

continue, or until the United States in congress assembled shall determine otherwise (52, 51).

ART. VII—When land-forces are raised by any state for the common defence, all officers of or under the rank of colonel shall be appointed by the legislature of each state respectively by whom such forces shall be raised, or in such manner as such state shall direct; and all vacancies shall be filled up by the state which first made the appointment (41).

ART. VIII.—All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all lands within each state, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States in congress assembled shall from time to time direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the United States in congress assembled (26).

ART. IX.—The United States in congress assembled shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the 6th Article; of sending and receiving ambassadors, entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding in all cases what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace, appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts (36, 64, 62, 36, 35, 22).

The United States in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority or lawful agent of any state, in controversy with another, shall present a petition to congress, stating the matter in question, and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but, if they can not agree, congress shall name 3 persons out of each of the United States; and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to 13: and from that number not less than 7 nor more than 9 names, as congress shall direct, shall in the presence of congress be drawn out by lot; and the persons whose names shall be so drawn, or any 5 of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons which congress shall judge sufficient, or, being present, shall refuse to strike, the congress shall proceed to nominate 3 persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court, to be appointed in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence or judgment, which shall in like manner be final and decisive,—the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath, to

be administered by one of the judges of the supreme or superior court of the state where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward": provided also that no state shall be deprived of territory for the benefit of the United States (67).

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands, and the states which passed such grants, are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the congress of the United States, be finally determined, as near as may be, in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states (67).

The United States in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states; fixing the standard of weights and measures throughout the United States; regulating the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated; establishing and regulating post-offices from one state to another throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land-forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations (30, 28, 32, 37, 62, 39).

The United States in congress assembled shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "A committee of the states", and to consist of 1 delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general

affairs of the United States under their direction; to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than 1 year in any term of 3 years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money, or emit bills on the credit of the United States, transmitting every half-year to the respective states an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding; and thereupon the legislature of each state shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed and within the time agreed on by the United States in congress assembled: But if the United States in congress assembled shall, on consideration of circumstances, judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same; in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States in congress assembled (53, 64, 26, 27, 38, 37, 41).

The United States in congress assembled shall never engage in a war; nor grant letters of marque and reprisal in time of peace; nor enter into any treaties or alliances; nor coin money, nor regulate the value thereof; nor ascertain the sums and expenses necessary for the defence and welfare of the United States, or any of them; nor emit bills, nor borrow money on the credit of the United States; nor appropriate money; nor agree upon the number of

vessels-of-war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander-in-chief of the army or navy, unless 9 states assent to the same: nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States in congress assembled (83, 36, 62, 30, 26, 27, 38, 37, 61, 43, 17).

The congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of 6 months, and shall publish the journal of their proceedings monthly, except such parts thereof, relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request, shall be furnished with a transcript of the said journal, except such parts as are above excepted, to lay before the legislatures of the several states (20, 19).

ART. X.—The committee of the states, or any 9 of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the United States in congress assembled, by the consent of 9 states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of 9 states in the congress of the United States assembled is requisite (53-64, 83).

ART. XI.—Canada, acceding to this confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of, this union: but no other colony shall be admitted into the same, unless such admission be agreed to by 9 states (76).

ART. XII.—All bills of credit emitted, moneys borrowed, and debts contracted, by or under the authority of congress before the assembling of the United States, in pursuance of the present confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said

United States and the public faith are hereby solemnly pledged (80).

ART. XIII.—Every state shall abide by the determinations of the United States in congress assembled, on all questions which, by this confederation, are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed by the legislatures of every state (79).

And whereas it hath pleased the great Governor of the world to incline the hearts of the legislatures we respectively represent in congress to approve of, and to authorize us to ratify, the said articles of confederation and perpetual union, KNOW YE, that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States in congress assembled on all questions which by the said confederation are submitted to them; and that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. In witness whereof, we have hereunto set our hands in congress. Done at Philadelphia, in the state of Pennsylvania, the 9th day of July, in the year of our Lord 1778, and in the 3d year of the Independence of America (83).

ORDINANCE OF 1787

BE IT ORDAINED by the United States in congress assembled (77).* That the said territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may in the opinion of congress, make it expedient.

Be it ordained by the authority aforesaid, That the estates, both of resident and non-resident proprietors in the said territory, dying intestate, shall descend to, and be distributed among their children, and the descendants of a deceased child in equal parts; the descendants of a deceased child or grandchild, to take the share of their deceased parent in equal parts among them: And where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate, shall have in equal parts among them, their deceased parents' share; and there shall in no case be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district.—And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be (being of full age) and attested by 3 witnesses;—and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person being of full age, in whom the estate may be, and attested by 2 witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof

* The reference numerals refer to corresponding provisions in the national constitution.

duly proved, and be recorded within 1 year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskies, Saint Vincent's, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to the descent and conveyance of property.

Be it ordained by the authority aforesaid, That there shall be appointed from time to time, by congress, a governor, whose commission shall continue in force for the term of 3 years, unless sooner revoked by congress, he shall reside in the district, and have a freehold estate therein, in 1,000 acres of land while in the exercise of his office (53).

There shall be appointed from time to time, by congress, a secretary, whose commission shall continue in force for 4 years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in 500 acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every 6 months, to the secretary of congress: There shall also be appointed a court to consist of 3 judges, any 2 of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in 500 acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior (66).

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original states, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to congress, from time to time; which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by congress; but afterwards the legislature shall have author ity to alter them as they shall think fit.

The governor for the time being, shall be commander-in-chief of the militia, appoint and commission all officers in the same,

below the rank of general officers; all general officers shall be appointed and commissioned by congress (41).

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same: After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof—and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

So soon as there shall be 5,000 free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly; provided that for every 500 free male inhabitants, there shall be 1 representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives shall amount to 25; after which the number and proportion of representatives shall be regulated by the legislature: provided that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States 3 years, and be a resident in the district, or unless he shall have resided in the district 3 years; and in either case shall likewise hold in his own right, in fee simple, 200 acres of land within the same; provided also, that a freehold in 50 acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and 2 years residence in the district shall be necessary to qualify a man as an elector of a representative (4).

The representatives thus elected, shall serve for the term of 2 years (3); and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township, for which he was a member, to elect another in his stead, to serve for the residue of the term.

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives (2). The legislative council shall consist of 5 members, to continue in office 5 years, unless sooner removed by congress; any 3 of whom to be a quorum: and the members of the council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and, when met, they shall nominate 10 persons, residents in the district, and each possessed of a freehold in 500 acres of land, and return their names to congress; 5 of whom congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate 2 persons, qualified as aforesaid, for each vacancy, and return their names to congress; one of whom congress shall appoint and commission for the residue of the term. And every 5 years, 4 months at least before the expiration of the time of service of the members of council, the said house shall nominate 10 persons, qualified as aforesaid, and return their names to congress; 5 of whom congress shall appoint and commission to serve as members of the council 5 years, unless sooner removed (8). And the governor, legislative council, and house of representatives, shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever, shall be of any force without his assent (24). The governor shall have power to convene, prorogue and dissolve the general assembly, when in his opinion it shall be expedient (64).

The governor, judges, legislative council, secretary, and such other officers as congress shall appoint in the district, shall take

an oath or affirmation of fidelity, and of office; the governor before the president of congress, and all other officers before the governor (82). As soon as a legislature shall be formed in the district, the council and house assembled, in one room, shall have authority, by joint ballot, to elect a delegate to congress, who shall have a seat in congress, with a right of debating, but not of voting during this temporary government.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory: to provide also for the establishment of states, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original states, at as early periods as may be consistent with the general interest (76, 77):

It is hereby ordained and declared, by the authority aforesaid, That the following articles shall be considered as articles of compact between the original states, and the people and states in the said territory, and forever remain unalterable, unless by common consent, to wit (1):

1. No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory (84).

2. The inhabitants of the said territory, shall always be entitled to the benefits of the writ of habeas corpus (45), and of the trial by jury (89, 90); of a proportionate representation of the people in the legislature (5), and of judicial proceedings according to the course of the common law (90). All persons shall be bailable (91), unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate (91); and no cruel or unusual punishments shall be inflicted (91). No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land (89), and should the public exigencies make it necessary, for the common preservation, to take any person's property (88), or to demand his particular services, full compensation shall be made for the same. And in the just preservation of rights and property, it is understood and

declared, that no law ought ever to be made, or have force in the said territory, that shall in any manner whatever interfere with, or affect private contracts or engagements, bona fide, and without fraud previously formed (51).

3. Religion, morality and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded or disturbed, unless in just and lawful wars authorized by congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them (28).

4. The said territory, and the states which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the articles of confederation, and to such alterations therein, as shall be constitutionally made; and to all the acts and ordinances of the United States in congress assembled, conformable thereto. The inhabitants and settlers in the said territory, shall be subject to pay a part of the federal debts, contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by congress, according to the same common rule and measure, by which apportionments thereof shall be made on the other states; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district or districts or new states, as in the original states, within the time agreed upon by the United States in congress assembled. The legislatures of those districts or new states, shall never interfere with the primary disposal of the soil by the United States in congress assembled, nor with any regulations congress may find necessary for securing the title in such soil to the bona fide purchasers (77). No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to

the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefor (48).

5. There shall be formed in the said territory, not less than 3, nor more than 5 states; and the boundaries of the states, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: The western state in the said territory, shall be bounded by the Mississippi, the Ohio and Wabash rivers; a direct line drawn from the Wabash and Post Vincents due north to the territorial line between the United States and Canada; and by the said territorial line to the lake of the Woods and Mississippi. The middle state shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio; by the Ohio, by a direct line drawn due north from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The eastern state shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: provided, however, and it is further understood and declared, that the boundaries of these 3 states, shall be subject so far to be altered, that if congress shall hereafter find it expedient, they shall have authority to form 1 or 2 states in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of lake Michigan. And whenever any of the said states, shall have 60,000 free inhabitants therein, such state shall be admitted, by its delegates, into the congress of the United States, on an equal footing with the original states, in all respects whatever; and shall be at liberty to form a permanent constitution and state government (76): provided the constitution and government so to be formed, shall be republican (78), and in conformity to the principles contained in these articles; and so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the state than 60,000.

6. There shall be neither slavery nor involuntary servitude in the said territory (98), otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: pro-

vided always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid (75).

Be it ordained by the authority aforesaid, That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA

NOTE.—The paragraphs are marked by the numbers by which they are referred to throughout the book. The numbers in parentheses refer to corresponding paragraphs in the constitution of the state of New York or in this constitution.

PREAMBLE

1 (111) We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

ARTICLE I—Legislative

SECTION 1—CONGRESS

2 (130) 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

SECTION 2.—HOUSE OF REPRESENTATIVES

3 (136 to 135) 1. *Election*—The house of representatives shall be composed of members chosen every 2d year by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

4 (147) (148) (10) 2. *Qualifications*—No person shall be a representative who shall not (1) have attained the age of 25 years, and (2) been 7 years a citizen of the United States, and who shall not (3) when elected, be an inhabitant of that state in which he shall be chosen.

5 (142) 3. *Apportionment*—Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free per-

sons, including those bound to service for a term of years, and excluding Indians not taxed, ⅗ of all other persons. The actual (98)
enumeration shall be made within 3 years after the first meeting of the congress of the United States, and within every subsequent term of 10 years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every 30,000, but each state shall have at least 1 representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose 3; Massachusetts, 8; Rhode Island and Providence Plantations, 1: Connecticut, 5; New York, 6; New Jersey, 4; Pennsylvania, 8; Delaware, 1; Maryland, 6; Virginia, 10; North Carolina, 5; South Carolina, 5; and Georgia 3.

4. *Vacancies*—When vacancies happen in the representation 6
from any state, the executive authority thereof shall issue writs (149)
of election to fill such vacancies.

5. *Officers*—The house of representatives shall choose their 7
speaker and other officers, and shall have the sole power of im- (150)
peachment. (218)

SECTION 3—SENATE

1. *Election*—The senate of the United States shall be composed 8
of 2 senators from each state, chosen by the legislature thereof, (137)
for six years; and each senator shall have 1 vote.

2. Immediately after they shall be assembled in consequence 9
of the first election, they shall be divided as equally as may be into 3 classes. The seats of the senators of the 1st class shall be vacated at the expiration of the 2d year, of the 2d class at the expiration of the 4th year, and of the 3d class at the expiration of the 6th year, so that ⅓ may be chosen every 2d year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

3. *Qualifications*—No person shall be a senator who shall not 10
have (1) attained the age of 30 years, and (2) been 9 years a citi- (148)
zen of the United States, and who shall not (3), when elected, be (4)
an inhabitant of that state for which he shall be chosen.

4. *Officers*—The vice-president of the United States shall be 11

(189) president of the senate, but shall have no vote unless they be equally divided.

12 (150) 5. The senate shall choose their other officers, and also a president *pro tempore* in the absence of the vice-president, or when he shall exercise the office of president of the United States.

13 (218) (61) 6. *Impeachment*—The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of $\frac{2}{3}$ of the members present.

14 (218) (187) 7. Judgments in cases of impeachments shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment, according to law.

Section 4—Elections and meetings of congress

15 (149) 1. *Elections*—The times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the place of choosing senators.

16 (265) 2. *Meetings*—The congress shall assemble at least once in every year; and such meeting shall be on the 1st Monday in December, unless they shall by law appoint a different day.

Section 5—Organization

17 (150) 1. *Quorum*—Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quroum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

18 (150) 2. *Rules*—Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of $\frac{2}{3}$, expel a member.

19 (151) (178) 3. *Journal*—Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays

of the members of either house on any question shall, at the desire of $\frac{1}{5}$ of those present, be entered on the journal. (227)

4. *Adjournment*—Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than 3 days, nor to any other place than that in which the two houses shall be sitting. 20 (151)

SECTION 6—MEMBERS AS INDIVIDUALS

1. *Pay and privileges*—The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place. 21 (146) (152)

2. *Prohibitions*—No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office. 22 (147) (148)

SECTION 7—REVENUE BILLS; THE VETO 23 (153)

1. *Revenue bills*—All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills. (173) (177) (178)

2. *The veto*—Every bill which shall have passed the house of representatives and the senate shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it; but if not he shall return it, with his objections, to that house in which it shall have originated; who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, $\frac{2}{3}$ of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by $\frac{2}{3}$ of that house, it shall become a law. But in all such cases, the votes of houses shall be determined by yeas and 24 (191)

nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within 10 days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return, in which case it shall not be a law.

25 3. Every order, resolution or vote, to which the concurrence
(154) of the senate and the house of representatives may be necessary (except on a question of adjournment), shall be presented to the president of the United States; and, before the same shall take effect, shall be approved by him; or, being disapproved by him shall be repassed by ⅔ of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

26 SECTION 8—LEGISLATIVE POWERS

(174) The congress shall have power:

(177) 1. To lay and collect taxes, duties, imposts, and excises; to
(233) pay the debts and provide for the common defence and general
(230) welfare of the United States; but all duties, imposts and excises
(232) shall be uniform throughout the United States.

27 2. To borrow money on the credit of the United States.

28 3. To regulate commerce with foreign nations, and among the
(126) several states, and with the Indian tribes.

29 4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

30 5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

31 6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

32 7. To establish post-offices and post-roads.

33 8. To promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries.

34 9. To constitute tribunals inferior to the supreme court.

35 10. To define and punish piracies and felonies committed on the high seas, and offences against the law of nations.

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water. 36

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than 2 years. 37

13. To provide and maintain a navy. 38

14. To make rules for the government and regulation of the land and naval forces. 39

15. To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions. 40

16. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States; reserving to the states respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by congress. 41 (269 to 274)

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding 10 miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and 42

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof. 43 (136)

Section 9—Prohibitions upon the United States

1. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year 1808; but a tax or duty may be imposed on such importation not exceeding $10 for each person. 44 (98)

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in case of rebellion or invasion, the public safety may require it. 45 (115)

3. No bill of attainder, or ex post facto law shall be passed. 46

47 4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

48 5. No tax or duty shall be laid on any articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to or from one state be obliged to enter, clear or pay duties in another.

49 (174) (172) 6. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

50 7. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the congress, accept of any present, emolument, office or title of any kind whatever, from any king, prince, or foreign state.

51 SECTION 10—PROHIBITIONS UPON THE STATES

(62) (36) (30) (27) (46) (51) (50) 1. *Absolute*—No state shall (1) enter into any treaty, alliance or confederation; (2) grant letters of marque and reprisal; (3) coin money; (4) emit bills of credit; (5) make anything but gold and silver coin a tender in payment of debts; (6) pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or (7) grant any title of nobility.

52 (26) (37) (38) (62) (36) 2. *Except by consent of congress*—No state shall, without consent of congress, (1) lay any imports or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the treasury of the United States, and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, (2) lay any duty of tonnage, (3) keep troops or ships of war in time of peace, (4) enter into any agreement or compact with another state, or with a foreign power, or (5) engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II—Executive

Section 1—The President and vice-president

1. *Election*—The executive power shall be vested in a president 53
of the United States of America. He shall hold his office during (183)
the term of 4 years; and together with the vice-president chosen
for the same term, be elected as follows:

2. Each state shall appoint, in such manner as the legislature 54
thereof may direct, a number of electors equal to the whole num- (185)
ber of senators and representatives to which the state may be
entitled in the congress; but no senator or representative, or per-
son holding an office of trust or profit under the United States,
shall be appointed an elector.

The following clause has been superseded by article XII of the amendments:

3. The electors shall meet in their respective states, and vote by ballot 55
for 2 persons, of whom one at least shall not be an inhabitant of the same (95
state with themselves. And they shall make a list of all the persons voted to
for, and of the number of votes for each, which list they shall sign and cer- 97)
tify, and transmit, sealed, to the seat of the government of the United
States, directed to the president of the senate. The president of the senate
shall, in the presence of the senate and house of representatives, open all
the certificates, and the votes shall then be counted. The person having
the greatest number of votes shall be the president, if such number be a
majority of the whole number of electors appointed, and if there be more
than one who have such majority, and have an equal number of votes, then
the house of representatives shall immediately choose by ballot one of them
for president; and if no person have a majority, then, from the 5 highest
on the list, the said house shall, in like manner, choose the president.
But in choosing the president, the votes shall be taken by states, the repre-
sentation from each state having 1 vote; a quorum for this purpose shall con-
sist of a member or members from ⅔ of the states, and a majority of all the
states shall be necessary to a choice. In every case, after the choice of the
president, the person having the greatest number of votes of the electors
shall be the vice-president. But if there should remain 2 or more who have
equal votes, the senate shall choose from them, by ballot, the vice-president.

4. The congress may determine the time of choosing the elec- 56
tors, and the day on which they shall give their votes, which day
shall be the same throughout the United States.

5. *Qualifications*—No person, except (1) a natural born citizen 57
or a citizen of the United States at the time of the adoption of (184)
this constitution shall be eligible to the office of president; neither
shall any person be eligible to that office who shall not have (2)

attained to the age of 35 years, and (3) been 14 years a resident within the United States.

58 (188) 6. *Vacancy*—In case of the removal of the president from office, or of his death, resignation or inability to discharge the powers and duties of said office, the same shall devolve on the vice-president; and the congress may, by law, provide for the case of re-
(189) moval, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

59 (186) (167) (268) 7. *Salary*—The president shall, at stated times, receive for his services a compensation which shall neither be increased or diminished during the period for which he shall have been elected; and he shall not receive within that period any other emolument from the United States, or any of them.

60 (82) (280) (281) 8. *Oath*—Before he enter on the execution of his office, he shall take the following oath of affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States; and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

Section 2—Powers of the president

61 (186) 1. The president shall be (1) commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may (2) require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the
(187) duties of their respective offices; and he shall (3) have power to grant reprieves and pardon for offences against the United States, except in cases of impeachment.

62 (201) (210) (194) (195) 2. He shall (4) have power, by and with the advice and consent of the senate, to make treaties, provided $\frac{2}{3}$ of the senators present concur; and he shall (5) nominate, and by and with the advice and consent of the senate shall appoint, (*a*) ambassadors, (*b*) other public ministers and consuls, (*c*) judges of the supreme court, and (*d*) all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be estab-

lished by law. But the congress may, by law, vest the appoint- (252)
ment of such inferior officers as they think proper, in the presi- (192)
dent alone, in the courts of law, or in the heads of departments.

3. The president shall (6) have power to fill up all vacancies 63
that may happen during the recess of the senate, by grant- (194)
ing commissions which shall expire at the end of their next (198)
session. (211)
(221)

SECTION 3

1. He shall, from time to time, (7) give to the congress informa- 64
tion of the state of the union, and (8) recommend to their con- (186)
sideration such measures as he shall judge necessary and expedi-
dent. He may, (9) on extraordinary occasions, convene both
houses, or either of them; and in case of disagreement between
them with respect to the time of adjournment, he may (10) ad-
journ them to such time as he shall think proper. He shall (11)
receive ambassadors and other public ministers. He shall (12)
take care that the laws be faithfully executed; and shall (13)
commission all the officers of the United States.

SECTION 4—IMPEACHMENTS

1. The president, vice-president, and all civil officers of the 65
United States, shall be removed from office on impeachment for, (216)
and conviction of, treason, bribery or other higher crimes and mis- (218)
demeanors.

ARTICLE III—Judicial

SECTION 1—COURTS

1. The judicial power of the United States shall be vested in 66
one supreme court, and in such inferior courts as the congress (210)
may, from time to time, ordain and establish. The judges, both (201)
of the supreme and inferior courts, shall hold their offices during (207)
good behavior; and shall, at stated times, receive for their ser- (216)
vices a compensation which shall not be diminished during their (217)
continuance in office.

SECTION 2—JURISDICTION

1. *Extent*—The judicial power shall extend to (1) all cases in 67
law and equity arising under this constitution, the laws of the (208)
United States and treaties made, or which shall be made under (206)

(213) their authority; to (2) all cases affecting ambassadors, other public ministers and consuls; to (3) all cases of admiralty and maritime jurisdiction; to (4) controversies to which the United States shall be a party; to controversies (5) between 2 or more states; (6) between a state and citizens of another state; (7) between citizens of different states; (8) between citizens of the same state claiming lands under grants of different states, and (9) between a state, or the citizens thereof, and foreign states, citizens or subjects.

68 2. *Original and appellate*—In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court (212) shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

69 3. *Criminal*—The trial of all crimes, except in cases of im- (113) peachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Section 3—Treason

70 1. *Definition and proof*—Treason against the United States shall consist only in levying war against them or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of 2 witnesses to the same overt act, or on confession in open court.

71 2. *Limit*—The congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV—Relations of states

Section 1—Public records

72 1. Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state; and the congress may, by general laws, prescribe the manner in

which such acts, records and proceedings shall be proved, and the effect thereof.

SECTION 2—RIGHTS OF CITIZENS

1. *In other states*—The citizens of each state shall be entitled to 73
all privileges and immunities of citizens in the several states.

2. *Extradition*—A person charged in any state with treason, 74
felony or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. *A relic of slavery*—No person held to service or labor in one 75
state under the laws thereof, escaping into another shall, in con- (98)
sequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered upon claim of the party to whom such service or labor may be due.

SECTION 3—NEW STATES AND TERRITORIES

1. *New states*—New states may be admitted by the congress in- 76
to this union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of 2 or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

2. *Territories*—The congress shall have power to dispose of, 77
and make all needful rules and regulation respecting, the territory (237)
or other property belonging to the United States, and nothing in (121)
this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4—NATIONAL PROTECTION

1. The United States shall guarantee to every state in this union 78
a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE V—Amendments

1. The congress, whenever ⅔ of both houses shall deem it neces- 79
sary, shall propose amendments to this constitution; or, on the (287)
application of the legislatures of ⅔ of the several states, shall

call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution when ratified by the legislatures of ¾ of the several states, or by conventions of ¾ thereof, as the one or the other mode of ratification may be proposed by congress; provided that no
(44) amendment, which may be made prior to the year 1808, shall in
(47) any manner affect the 1st and 4th clauses in the 9th section of the
(8) 1st article, and that no state without its consent, shall be deprived of its equal suffrage in the senate.

ARTICLE VI—Sundry provisions

80 1. *National debts*—All debts contracted and engagements en-
(128) tered into before the adoption of this constitution shall be as valid against the United States under this constitution, as under the confederation.

81 2. *National law supreme*—This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

82 3. *Oaths*—The senators and representatives before mentioned,
(280) and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII—Establishment

83 1. The ratification of the conventions of 9 states shall be suffi-
(290) cient for the establishment of this constitution between the states so ratifying the same.—*Constitution ratified by states, 1787–90.*

AMENDMENTS

I—Freedom of religion, speech, and petition

84 Congress may make no law respecting an establishment of
(114) religion, or prohibiting the free exercise thereof; or abridging the
(119) freedom of speech or of the press; or the right of the people
(120) peaceably to assemble, and to petition the government for a redress of grievances.—(*1791*).

II—Arms

85

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.—(*1791*). (269 to 274)

III—Quartering of soldiers

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.—(*1791*). 86

IV.—Search warrants

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.—(*1791.*) 87

V—Criminal proceedings

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.—(*1791.* 88 (117) (118)

VI—Criminal proceedings

In all criminal proceedings, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.—(*1791.*) 89

VII—Trial by jury

In suits at common law, where the value in controversy shall 90

(113) exceed $20, the right of trial by jury shall be preserved; and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law—(*1791.*)

VIII—Excessive bail and punishment

91 Excessive bail shall not be required, nor excessive fines imposed,
(116) nor cruel and unusual punishments inflicted.—(*1791.*)

IX—Rights not named

92 The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people. —(*1791.*)

X—Powers reserved by the states

93 The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.—(*1791.*)

XI—Suits against states

94 The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.—(*1798.*)

XII—Election of president

95 1. The electors shall meet in their respective states, and vote by
(55) ballot for president and vice-president, one of whom at least shall not be an inhabitant of the same state with themselves. They shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from

the persons having the highest numbers, not exceeding 3, on the list of those voted for as president, the house of representatives (185)
shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from ⅔ of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a president, whenever the right of the choice shall devolve upon them, before the 4th day of March next following, then the vice president shall act as president as in the case of the death or other constitutional disability of the president.

2. The person having the greatest number of votes as vice- 96
president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the 2 highest numbers on the list the senate shall choose the vice-president. A quorum for the purpose shall consist of ⅔ of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of 97
president shall be eligible to that of vice-president of the United (189)
States.—(*1804*) (184)

XIII—Slavery abolished

Neither slavery nor involuntary servitude, except as a punish- 98
ment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have power to enforce this article by appropriate legislation.—(*1865.*)

XIV—Civil rights

1. *Civil rights*—All persons born or naturalized in the United 99
States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

100 (139) (142) 2. *Apportionment of representatives*—Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being 21 years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male persons shall bear to the whole number of male citizens 21 years of age in such state.

101 3. *Political disabilities*—No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who having previously taken an oath as a member of congress, or as an officer of the United States, or as any member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a $\frac{2}{3}$ vote of each house, remove such disability.

102 (233) 4. *Public debt*—The validity of the public debt of the United States authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection and rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

103 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.—(*1868.*)

XV—Suffrage

1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude. 104 (112)

2. The congress shall have power to enforce this article by appropriate legislation.—(*1870.*) 105

THE CONSTITUTION OF THE STATE OF NEW YORK

Adopted November 6, 1894

As Amended and in Force January 1, 1901

Note—The present constitution is based upon that of 1846, and contains comparatively few changes. Every section that has been changed materially contains at the end a date. If this be "1846-94", the section was contained in the constitution of 1846 but has been amended. If the date be "1894", the section is new. The paragraphs are marked by the numbers by which they are referred to throughout the book. The numbers in parentheses refer to corresponding paragraphs in the national constitution or in this.

111 (1) We, the people of the state of New York, grateful to Almighty God for our freedom, in order to secure its blessings, DO ESTABLISH THIS CONSTITUTION. . .

ARTICLE I—Individual Rights

112 (104) 1. *Disfranchisement*—No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

113 (69) (90) 2. *Trial by jury*—The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived for the parties in all civil cases in the manner to be prescribed by law.

114 (84) (281) 3. *Religious liberty*—The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

4. *Habeas corpus, &c.*—The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension. 115 (45)

5. *Excessive bail and fines.*—Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained. 116 (91)

6. *Criminal proceedings*—No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this state may keep with the consent of congress in time of peace, and in cases of petit larceny, under the regulation of the legislature), unless on presentment or indictment of a grand jury, and in any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions. No person shall (1) be subject to be twice put in jeopardy for the same offence; nor shall he (2) be compelled in any criminal case to be a witness against himself; nor (3) be deprived of life, liberty or property without due process of law; nor (4) shall private property be taken for public use, without just compensation. 117 (88)

7. *Private property for public use*—When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the state, shall be ascertained by a jury or by not less than 3 commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited. General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dykes upon the lands of others, under proper restrictions and with just compensation, but no special laws shall be enacted for such purposes. —(*1846-94*). 118 (88) (171)

119 (84) 8. *Free speech and press*—Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libellous (1) is true, and was published (2) with good motives and (3) for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

120 (77) 9. *Petitions, divorces, gambling*—No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery or the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling hereafter be authorized or allowed within this state; and the legislature shall pass appropriate laws to prevent offences against any of the provisions of this section.—(*1846-94*).

121 (77) 10. *Property in lands*—The people of this state, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the state; and all lands the title to which shall fail, from a defect of heirs, shall revert, or escheat to the people.

122 11. *Feudal tenures*—All feudal tenures of every description, with all their incidents, are declared to be abolished, saving, however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

123 12. *Allodial tenures*—All lands within this state are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

124 13. *Limit of leases*—No lease or grant of agricultural land, for a longer period than 12 years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

125 14. *Fines, quarter-sales*—All fines, quarter-sales, or other like restraints upon alienation, reserved in any grant of land hereafter to be made, shall be void.

15. *Indian lands*—No purchase or contract for the sale of lands in this state, made since the 14th day of October, 1775; or which may hereafter be made, of, or with the Indians, shall be valid, unless made under the authority, and with the consent of the legislature. 126 (28)

16. *Common and statute law*—Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony, on the 19th day of April, 1775, and the resolutions of the congress of the said colony, and of the convention of the state of New York, in force on the 20th day of April, 1777, which have not since expired, or been repealed or altered; and such acts of the legislature of this state as are now in force, shall be and continue the law of this state, subject to such alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrogated. 127

17. *Grants of lands*—All grants of land within this state, made by the king of Great Britain, or persons acting under his authority, after the 14th day of October, 1775, shall be null and void; but nothing contained in this constitution shall affect any grants of land within this state, made by the authority of the said king or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state, or by persons acting under its authority; or shall impair the obligation of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice. 128 (77) (51) (80)

18. *No limit to damages for death*—The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation.—(*1894*). 129

ARTICLE II---Voters

1. *Qualifications*—Every (1) male (2) citizen (3) of the age of 21 years, who shall have been (4) a citizen for 90 days, and (5) an inhabitant of this state 1 year next preceding an election, and (6) 130 (3)

for the last 4 months a resident of the county, and (7) for the last 30 days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election (8) in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people; provided that in time of war no elector
(132) in the actual military service of the state, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.—(*1846-94.*)

131 2. *Bribery and betting*—No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer
(281 or promise to contribute to another, to be paid or used, any money
to or other valuable thing as a compensation or reward for the giv-
286) ing or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm, before such officers, that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime.—(*1846-94.*)

132 3. *Residence*—For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence (1) while employed in the service of the

United States; nor (2) while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor (3) while a student of any seminary of learning; nor (4) while kept at any alms-house or other asylum, or institution wholly or partly supported at public expense or by charity; nor (5) while confined in any public prison.—(*1846-94.*) (130)

4. *Registration*—Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least 10 days before each election. Such registration shall not be required for town and village elections except by express provision of law. In cities and villages having 5,000 inhabitants or more, according to the last preceding state enumeration of inhabitants, voters shall be registered upon personal application only; but voters not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of voters.—(*1846-94.*) 133

5. *Election by ballot*—All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.—(*1846-94.*) 134

6. *Boards of registration*—All laws creating, regulating or affecting boards or officers charged with the duty of registering voters, or of distributing ballots at the polls to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards of officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of said parties respectively, as the legislature may direct. Existing laws on this subject shall continue until the legislature shall otherwise provide. This section shall not apply to town meetings, or to village elections.—(*1894.*) 135

ARTICLE III.—The Legislature

136 (2) 1. *Two houses*—The legislative power of this state shall be vested in the senate and assembly.

137 (8) (141) 2. *How constituted*—The senate shall consist of 50 members, except as hereinafter provided. The senators elected in the year 1895 shall hold their offices for 3 years, and their successors shall be chosen for 2 years. The Assembly shall consist of 150 members who shall be chosen for 1 year.—(*1894.*)

138 (8) 3. *Senate districts*—The state shall be divided into 50 districts to be called senate districts, each of which shall choose 1 senator. The districts shall be numbered from 1 to 50, inclusive.—(*1894.*)

[The description of districts is omitted, as the districts are shown graphically upon the maps on pages 581, 570.]

139 (8) 4. *How altered*—An enumeration of the inhabitants of the state shall be taken under the direction of the secretary of state, during the months of May and June, in the year 1905, and in the same months every tenth year thereafter; and the said districts shall be so altered by the legislature at the first regular session after the return of every enumeration, that each senate district (1) shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and (2) be in as compact form as practicable, and (3) shall remain unaltered until the return of another enumeration, and (4) shall at all times consist of contiguous territory, and (5) no county shall be divided in the formation of a senate district except to make 2 or more senate districts wholly in such county. No town, and no block in a city enclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein, adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

140 No county shall have 4 or more senators unless it shall have a full ratio for each senator. No county shall have more than $\frac{1}{3}$ of all the senators; and no 2 counties or the territory thereof as now organized, which are adjoining counties, or which are sep-

arated only by public waters, shall have more than ½ of all the senators.

The ratio for apportioning senators shall always be obtained by 141
dividing the number of inhabitants, excluding aliens, by 50, and (8)
the senate shall always be composed of 50 members, except that if any county having 3 or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the 50 senators, and the whole number of senators shall be increased to that extent.—(*1894.*)

5. *Assembly districts*—The members of the assembly shall be 142
chosen by single districts, and shall be apportioned by the legislature at the first regular session after the return of every enum- (3)
eration among the several counties of the state, as nearly as may (5)
be according to the number of their respective inhabitants, ex- (100)
cluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to 1 member of assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhab- 143
itants of the state, excluding aliens, by the number of members (5)
of assembly, shall be the ratio for apportionment, which shall be made as follows: 1 member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and ½ over. 2 members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than 2 ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more members of assembly than a county having a greater number of inhabitants, excluding aliens.

[The present apportionment of members of assembly is given on page 580.]

144 In any county entitled to more than 1 member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble on the second Tuesday of June, 1895, and at such times as the legislature making an apportionment shall prescribe, and divide such counties into assembly districts (1) as nearly equal in number of inhabitants, excluding aliens, as may be, (2) of convenient and contiguous territory (3) in as compact form as practicable, (4) each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the secretary of state and of the clerk of such county, a description of such districts, specifying the number of each district and of the inhabitants thereof, excluding aliens, according to the last preceding enumeration; and such apportionment and districts (5) shall remain unaltered until another enumeration shall be made, as herein provided; but said division of the city of Brooklyn and the county of Kings to be made on the 2d Tuesday of June, 1895, shall be made by the common council of the said city and the board of supervisors of said county, assembled in joint session. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of assembly districts, nor shall any district contain a greater excess in population over an adjoining district in the same senate district, than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens: but in the division of cities under the first apportion-

ment, regard shall be had to the number of inhabitants, excluding aliens, of the election districts according to the state enumeration of 1892, so far as may be, instead of blocks. Nothing in this section shall prevent the division, at any time, of counties and towns, and the erection of new towns by the legislature.

An apportionment by the legislature, or other body, shall be 145
subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.—(*1894.*)

6. *Salary of members*—Each member of the legislature shall re- 146
ceive for his services an annual salary of $1,500. The members (21)
of either house shall also receive the sum of $1.00 for every 10 miles they shall travel in going to and returning from their place of meeting, once in each session, on the most usual route. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding 9 in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of $10 a day.

7. *Prohibitions*—No member of the legislature shall receive 147
any civil appointment within this state, or the senate of the United (21)
States, from the governor, the governor and senate, or from the legislature, or from any city government, during the time for which he shall have been elected; and all such appointments and (215)
all votes given for any such member for any such office or appointment shall be void.

8. *Disqualifications*—No person shall be eligible to the legisla- 148
ture, who at the time of his election, is, or within 100 days previous thereto has been, (1) a member of congress, (2) a civil or mili- (22)
tary officer under the United States, or (3) an officer under any city (10)
government. And if any person shall, after his election as a member of the legislature, be elected to congress, or appointed to any office, civil or military, under the government of the United

States, or under any city government, his acceptance thereof shall vacate his seat.

149 9. *Election*—The elections of senators and members of assem-
(15) bly, pursuant to the provisions of this constitution, shall be held
(279) on the Tuesday succeeding the 1st Monday of November, unless otherwise directed by the legislature.

150 10. *Rules of the house*—A majority of each house shall consti-
(17) tute a quorum to do business. Each house shall determine the
(17) rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; and shall choose
(12) its own officers; and the senate shall choose a temporary president to preside in case of the absence or impeachment of the lieutenant-governor, or when he shall refuse to act as president, or shall act as governor.

151 11. *Journals*—Each house shall keep a journal of its proceed-
(18) ings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except
(20) when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than 2 days.

152 12. *Privilege*—For any speech or debate in either house of the
(21) legislature, the members shall not be questioned in any other place.

153 13. *Bills*—Any bill may originate in either house of the legisla-
(23) ture, and all bills passed by one house may be amended by the other.

154 14; *Enacting clause*—The enacting clause of all bills shall be
(25) "The people of the state of New York, represented in senate and assembly, do enact as follows," and no law shall be enacted except by bill.

155 15. *Deliberate legislation*—No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least 3 calendar legislative days prior to its final passage, unless the governor, or the acting governor, shall have certified to the necessity of its immediate passage, under his hand and the seal of the state; nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the legislature; and upon

the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the yeas and nays entered on the journal. —(*1846–94.*) (233)

16. *Private bills*—No private or local bill, which may be passed by the legislature, shall embrace more than one subject, and that shall be expressed in the title. 156

17. *Included laws inserted*—No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act. 157 (174) (177)

18. *Further restrictions*—The legislature shall not pass a private or local bill in any of the following cases:

(1) changing the names of persons; 158

(2) laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other low lands; 159

(3) locating or changing county seats; 160

(4) providing for changes of venu in civil or criminal cases; 161

(5) incorporating villages; 162

(6) providing for election of members of boards of supervisors; 163

(7) selecting, drawing, summoning or impanelling grand or petit jurors; 164 164

(8) regulating the rate of interest on money; 165

(9) the opening and conducting of elections or designating places of voting; 166 (3)

(10) creating, increasing or decreasing fees, percentages or allowances of public officers, during the term for which said officers are elected or appointed; 167 (59) (66)

(11) granting to any corporation, association or individual the right to lay down railroad tracks; 168

(12) granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever; 169

(13) granting to any person, association, firm or corporation an exemption from taxation on real or personal property (*adopted 1901*); 169 *a*

170 (14) providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the state.

171 (118) The legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its judgment may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of ½ in value of the property bounded on, and the consent also of the (204) local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners cannot be obtained, the appellate division of the supreme court, in the department in which it is proposed to be constructed, may, upon application, appoint 3 commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.—(*1846–1901.*)

172 (49) 19. *Private claims*—The legislature shall neither audit nor allow any private claim or account against the state, but may appropriate money to pay such claims as shall have been audited and allowed according to law.

173 (23) 20. *Two-thirds vote*—The assent of ⅔ of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

174 (49) 21. *Appropriation bills*—No money shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except (1) in pursuance of an appropriation by law; nor (2) unless such payment be made within 2 years next after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify (3) the sum appropriated, (157) and (4) the object to which it is to be applied; and it shall not be (177) sufficient for such law to refer to any other law to fix such sum.

175 22. *Extraneous provisions*—No provision or enactment shall

be embraced in the annual appropriation or supply bill, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriation.—(*1894.*)

23. *Revised statutes*—Sections 17 and 18 of this article shall not apply to any bill, or the amendments to any bill, which shall be reported to the legislature by commissioners who have been appointed pursuant to law to revise the statutes. 176

24. *Tax bills*—Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object. 177 (23) (157) (174)

25. On the final passage, in either house of the legislature, of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the state, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and $\frac{2}{3}$ of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein. 178 (23) (19)

26. *Supervisors*—There shall be in each county, except in a county wholly included in a city, a board of supervisors, to be composed of such members, and elected in such manner, and for such period, as is or may be provided by law. In a city which includes an entire county, or 2 or more entire counties, the powers and duties of a board of supervisors may be devolved upon the municipal assembly, common council, board of aldermen or other legislative body of the city.—(*1894.*) 179

27. *Local legislation*—The legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the state such further powers of local legislation and administration as the legislature may from time to time deem expedient. 180

28. *Extra compensation*—The legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor. 181 (59) (66)

29. *Prison-labor*—The legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several 1

state prisons, penitentiaries, jails and reformatories of the state; and on and after the 1st day of January, in the year 1897, no person in any such prison, penitentiary, jail or reformatory, shall be required or allowed to work, while under sentence thereto, at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation. This section shall not be construed to prevent the legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the state or any political division thereof, or for or to any public institution owned or managed and controlled by the state, or any political division thereof.—(*1894.*)

ARTICLE IV---Executive department

183 (53) 1. *Officers*—The executive power shall be vested in a governor, who shall hold his office for 2 years; a lieutenant-governor shall be chosen at the same time, and for the same term. The governor and lieutenant-governor elected next preceding the time when this section shall take effect, shall hold office until and including the 31st day of December, 1896, and their successors shall be chosen at the general election in that year.—(*1846-94.*)

184 (57) (97) 2. *Eligibility*—No person shall be eligible to the office of governor or lieutenant-governor, except (1) a citizen of the United States, (2) of the age of not less than 30 years, and (3) who shall have been 5 years next preceding his election a resident of this state.

185 (95) 3. *Election*—The governor and lieutenant-governor shall be elected at the times and places of choosing members of the assembly. The persons respectively having the highest number of votes for governor and lieutenant-governor shall be elected; but in case 2 or more shall have an equal and the highest number of votes for governor, or for lieutenant-governor, the two houses of the legislature at its next annual session shall forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for governor or lieutenant-governor.

1 86 4. *Duties of the governor*—The governor (1) shall be commander-in-chief of the military and naval forces of the state. He (2

shall have power to convene the legislature, or the senate only, on extraordinary occasions. At extraordinary sessions no subject shall be acted upon, except such as the governor may recommend for consideration. He (3) shall communicate by message to the legislature at every session the condition of the state, and (4) recommend such matters to it as he shall judge expedient. He (5) shall transact all necessary business with the officers of the government, civil and military. He (6) shall expedite all such measures as may be resolved upon by the legislature, and (7) shall take care that the laws are faithfully executed. He shall receive for his services an annual salary of $10,000, and there shall be provided for his use a suitable and furnished executive residence. (64) (61) (59)

5. *Pardons*—The governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offences except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the legislature at its next meeting, when the legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve. 187 (61)

6. *Power may devolve upon the lieutenant-governor*—In case of the impeachment of the governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the state, the powers and duties of the office shall devolve upon the lieutenant-governor for the residue of the term, or until the disability shall cease. But when the governor shall, with the consent of the legislature, be out of the state, in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military force of the State. 188 (58) (186)

189 (97) 7. *Duties of lieutenant-governor*—The lieutenant-governor shall possess the same qualifications of eligibility for office as the governor. He shall be president of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of gov- (58) ernor, the lieutenant-governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the state, the president of the senate shall act as governor until the vacancy be filled or the disability shall cease; and if the president of the senate for any of the above causes shall become incapable of performing the duties pertaining to the office of governor, the speaker of the assembly shall act as governor until the vacancy be filled or the disability shall cease.—(*1846-94.*)

190 (59) (66) (226) (228) 8. *Salary*—The lieutenant-governor shall receive for his services an annual salary of $5,000, and shall not receive or be entitled to any other compensation, fee or perquisite, for any duty or service he may be required to perform by the constitution or by law.

191 (24) (25) (276) 9. *The veto*—Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, (1) he shall return it with his objections to the house in which it shall have originated, (2) which shall enter the objections at large on the journal, and proceed to reconsider it. (3) If after such reconsideration, $\frac{2}{3}$ of the members elected to that house shall agree to pass the bill, it shall be sent together with the objections to the other house, by which it shall likewise be reconsidered; and (4) if approved by $\frac{2}{3}$ of the members elected to that house, it shall become a law notwithstanding the objections of the governor. In all such cases, the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. (5) If any bill shall not be returned by the governor within 10 days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislature, unless ap-

proved by the governor within 30 days after such adjournment. (6.) If any bill presented to the governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If on reconsideration one or more of such items be approved by $\frac{2}{3}$ of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

ARTICLE V---Other state officers

1. *Election*—The secretary of state, comptroller, treasurer, attorney-general and state engineer and surveyor shall be chosen at a general election, at the times and places of electing the governor and lieutenant-governor, and shall hold their offices for 2 years, except as provided in section 2 of this article. Each of the officers in this article named, excepting the speaker of the assembly, shall at stated times during his continuance in office receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use any fees or perquisites of office or other compensation. No person shall be elected to the office of state engineer and surveyor who is not a practical civil engineer. 192 (61) (62) (196) (59) (66) (190) (226) (228)

2. The first election of the secretary of state, comptroller, treasurer, attorney-general and state engineer and surveyor, pursuant to this article shall be held in the year 1895, and their terms of office shall begin on the 1st day of January following, and shall be for 3 years. At the general election in the year 1898, and every 2 years thereafter, their successors shall be chosen for the term of 2 years.—(*1894*) 193

194 3. *Supt of public works*—The superintendent of public works shall be appointed by the governor, by and with the advice and consent of the senate, and hold his office until the end of the term of the governor by whom he was nominated, and until his successor is appointed and qualified. He shall receive a compensation to be fixed by law. He shall be required by law to give security for the faithful execution of his office before entering upon the duties thereof. He shall be charged with the execution of all laws relating to the repair and navigation of the canals, and also of those relating to the construction and improvement of the canals, except so far as the execution of the laws relating to such construction or improvement shall be confided to the state engineer and surveyor; subject to the control of the legislature, he shall make the rules and regulations for the navigation or use of the canals. He may be suspended or removed from office by the governor, whenever, in his judgment, the public interest shall so require; but in case of the removal of such superintendent of public works from office, the governor shall file with the secretary of state a statement of the cause of such removal, and shall report such removal and the cause thereof to the legislature at its next session. The superintendent of public works shall appoint not more than 3 assistant superintendents, whose duties shall be prescibed by him, subject to modification by the legislature, and who shall recive for their services a compensation to be fixed by law. They shall hold their office for 3 years, subject to suspension or removal by the superintendent of public works, whenever, in his judgment, the public interest shall so require. Any vacancy in the office of any such assistant superintendent shall be filled for the remainder of of the term for which he was appointed by the superintendent of public works; but in case of the suspension or removal of any
(239) such assistant superintendent, by him, he shall at once report to the governor, in writing, the cause of such removal. All other persons employed in the care and management of the canals, except collectors of tolls, and those in the department of the state engineer and surveyor, shall be appointed by the superintendent of public works and be subject to suspension or removal by him. The superintendent of public works shall perform all the duties

of the former canal commissioners, and board of canal commissioners, as now declared by law, until otherwise provided by the legislature. The governor, by and with the advice and consent of the senate, shall have power to fill vacancies in the office of superintendent of public works; if the senate be not in session, he may grant commissions which shall expire at the end of the next succeeding session of the senate. (196)

4. *Sup't of state prisons*—A superintent of state prisons shall be appointed by the governor, by and with the advice and consent of the senate, and hold his office for 5 years, unless sooner removed; he shall give security in such amount, and with such sureties as shall be required by law for the faithful discharge of his duties; he shall have the superintendence, management and control of state prisons, subject to such laws as now exist or may hereafter be enacted; he shall appoint the agents, wardens, physicians and chaplains of the prisons. The agent and warden of each prison shall appoint all other officers of such prison, except the clerk, subject to the approval of the same by the superintendent. The comptroller shall appoint the clerks of the prisons. The superintendent shall have all the powers and perform all the duties not inconsistent herewith, which were formerly had and performed by the inspectors of state prisons. The governor may remove the superintendent for cause at any time, giving to him a copy of the charges against him, and an opportunity to be heard in his defence.—(*1846-94.*) 195

5. *Ex-officio boards.*—The liutenant-governor, speaker of the assembly, secretary of state, comptroller, treasurer, attorney-general and state engineer and surveyor shall be the commissioners of the land office. The lieutenant-governor, secretary of state, comptroller, treasurer and attorney-general shall be the commissioners of the canal fund. The canal board shall consist of the commissioners of the canal fund, the state engineer and surveyor and the superintendent of public works.—(*1846-94.*) 196 (194) (236)

6. The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.* 197

7. *Treasurer may be suspended*—The treasurer may be sus- 198

*For table of ex-officio boards see page 210.

pended from office by the governor, during the recess of the leg-
(260) islature, and until 30 days after the commencement of the next
(266) of the session legislature, whenever it shall appear to him that such treasurer has, in any particular, violated his duty. The governor shall appoint a competent person to discharge the duties of the office during such suspension of the treasurer.

199 8 *Certain offices abolished*—All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished; and no such office shall hereafter be created by law; but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the state in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any such office for such purposes hereafter.

200 9. *Civil service examinations*—Appointments and promotions in the civil service of the state, and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the army and navy of the United States in the late civil war, who are citizens and residents of this state, shall be entitled to preference in appointment and promotion, without regard to their standing on any list from which such appointment or promotion may be made. Laws shall be made to provide for the enforcement of this section.—(*1884.*)

ARTICLE VI.---Judiciary

201 1. *Supreme court*—The supreme court is continued with general
(66) jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as now is or may be prescribed by law not inconsistent with this article. The existing judicial districts of the state are continued until changed as hereinafter provided.* The supreme court shall consist of the justices now in
)208) office, and of the judges transferred thereto by the 5th section of

See map, page 568.

this article, all of whom shall continue to be justices of the supreme court during their respective terms, and of 12 additional justices who shall reside in and be chosen by the electors of, the several existing judicial districts, 3 in the first district, 3 in the second, and 1 in each of the other districts; and of their successors. The successors of said justices shall be chosen by the electors of their respective judicial districts. The legislature may alter the judicial districts once after every enumeration under the constitution, of the inhabitants of the state, and thereupon reapportion the justices to be thereafter elected in the districts so altered.—(*1846-94.*)

2. *Judicial departments*—The legislature shall divide the state 202
into 4 judicial departments. The 1st department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be. Once every 10 years the legislature may alter the judicial departments, but without increasing the number thereof.

There shall be an appellate division of the supreme court, 203
consisting of 7 justices in the first department, and of 5 justices in each of the other departments. In each department 4 shall constitute a quorum, and the concurrence of 3 shall be necessary to a decision. No more than 5 justices shall sit in any case.

From all the justices elected to the supreme court, the 204
governor shall designate those who shall constitute the appellate division in each department; and he shall designate the presiding justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other justices shall be designated for terms of 5 years, or the unexpired portions of their respective terms of office, if less than 5 years. From that time as the terms of such designations expire, or vacancies occur, he shall make new designations. A majority of the justices designated to sit in the appellate division in each department shall be residents of the department. He may also make temporary designations in case of the absence or inability to act, of any justice of the appellate division, or in case the presiding justice of any appellate division shall certify to him that one or more additional justices are needed for the speedy disposition of the business before it. Whenever the appellate division in any department shall be unable to dispose of its business within a

reasonable time, a majority of the presiding justices of the several departments at a meeting called by the presiding justice of the department in arrears may transfer any pending appeals from such department to any other department for hearing and determination. No justice of the appellate division shall exercise any of the powers of a justice of the supreme court, other than those of a justice out of court, and those pertaining to the appellate division or to the hearing and decision of motions submitted by consent of counsel. From and after the last day of December, 1895, the appellate division shall have the jurisdiction
(214) now exercised by the supreme court at its general terms, and by the general terms of the court of common pleas for the city and county of New York, the superior court of the city of New
(122) York, the superior court of Buffalo and the city court of Brook-
(171) lyn, and such additional jurisdiction as may be conferred by the legislature. It shall have power to appoint and remove a reporter.

205 The justices of the appellate division in each department shall have power to fix the times and places for holding special and trial terms therein, and to assign the justices in the departments to hold such terms, or to make rules therefor,—(*1894.*)

206 3. *Equity cases*—No judge or justice shall sit in the appellate division or in the court of appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like
(67) manner as in cases at law; and, except as herein otherwise provided, the legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

207 4. *Term of office.*—The official terms of the justices of the su-
(66) preme court shall be 14 years from and including the 1st day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of justice of the supreme court the same shall be filled for a full term, at the next general election, happening not less than 3 months after such vacancy occurs; and, until the vacancy shall be so filled, the governor by and with the advice and consent of the senate, if the senate shall be in session, or if not in session the governor, may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

5. *Abolishment of courts*—The superior court of the city of New 208
York, the court of common pleas for the city and county of New York, the superior court of Buffalo, and the city court of Brooklyn, are abolished from and after the 1st day of January, 1896, and thereupon the seals, records, papers and documents of or belonging to such courts, shall be deposited in the offices of the clerks of the several counties in which said courts now exist; and all actions and proceedings then pending in such courts, shall be transferred to the supreme court for hearing and determination. The judges of said courts in office on the 1st day of January, 1896, shall, for the remainder of the term for which they were elected or appointed, be justices of the supreme court; but they shall sit only in the counties in which they were elected or appointed. Their salaries shall be paid by the said counties respectively, and shall be the same as the salaries of the other justices of the supreme court residing in the same counties. Their successors shall be elected as justices of the supreme court by the electors of the judicial districts in which they respectively reside. The jurisdic- (67)
tion now exercised by the several courts hereby abolished, shall be vested in the supreme court: Appeals from inferior and local courts now heard in the court of common pleas for the city and county of New York and the superior court of Buffalo, shall be heard in the supreme court in such manner and by such justice or justices as the appellate divisions in the respective departments which include New York and Buffalo shall direct, unless otherwise provided by the legislature.—(*1894*).

6. *Jurisdiction*—Circuit courts and courts of oyer and ter- 209
miner are abolished from and after the last day of December, 1895. All their jurisdiction shall thereupon be vested in the supreme court, and all actions and proceedings then pending in such courts shall be transferred to the supreme court for hearing and determination. Any justice of the supreme court; except as otherwise provided in this article, may hold court in any county.—(*1894*).

7. *Court of appeals*—The court of appeals is continued. It shall 210
consist of the chief judge and associate judges now in office, who shall hold their offices until the expiration of their respective (62)
terms, and their successors, who shall be chosen by the electors of the state. The official terms of the chief judge and associate (66)

judges shall be 14 years from and including the 1st day of January next after their election. 5 members of the court shall form a quorum, and the concurrence of 4 shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk and attendants. Whenever and as often as a majority of the judges of the court of appeals shall certify to the governor that said court is unable by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the governor shall designate not more than 4 justices of the supreme court to serve as associate judges of court of appeals. The justices so designated shall be relieved from their duties as justices of the supreme court and shall serve as associate judges of the court of appeals until the causes undisposed of in said court are reduced to 200, when they shall return to the supreme court. The governor may designate justices of the supreme court to fill vacancies. No justice shall serve as associate judge of the court of appeals except while holding the office of justice of the supreme court, and no more than 7 judges shall sit in any case.—(*1846–94, as amended in 1899*).

211 8. *Filling of vacancies*—When a vacancy shall occur otherwise than by expiration of term, in the office of chief or associate judge of the court of appeals, the same shall be filled, for a full term, at the next general election happening not less than 3 months after (62) such vacancy occurs; and until the vacancy shall be so filled, the (63) governor, by and with the advice and consent of the senate, if the senate shall be in session, or if not in session the governor may fill such vacancy by appointment. If any such appointment of chief judge shall be made from among the associate judges, a temporary appointment of associate judge shall be made in like manner; but in such case, the person appointed chief judge shall not be deemed to vacate his office of associate judge any longer than until the expiration of his appointment as chief judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of judges is sufficient to constitute a quorum. All appointments under this section shall continue until and including the last day of December next after election at which the vacancy shall be filled.

9. *Jurisdiction*—After the last day of December, 1895, the jurisdiction of the court of appeals, except where the judgment is of death, shall be limited to the review of questions of law. No unanimous decision of the appellate division of the supreme court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the court of appeals. Except where the judgment is of death, appeals may be taken, as of right, to said court only from judgments or orders entered upon decisions of the appellate division of the supreme court, finally determining actions or special proceedings, and from orders granting new trials on exceptions, where the appellants stipulate that upon affirmance judgment absolute shall be rendered against them. The appellate division in any department, may however, allow an appeal upon any question of law which, in its opinion, ought to be reviewed by the court of appeals. 212 (67) (68) (204)

The legislature may further restrict the jurisdiction of the court of appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved. 213 (67)

The provisions of this section shall not apply to orders made or judgments rendered by any general term before the last day of December, 1895, but appeals therefrom may be taken under existing provisions of law.—(*1894*). 214 (204)

10. *Prohibitions*—The judges of the court of appeals and the justices of the supreme court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the legislature or the people shall be void. 215 (147)

11. *Removal*—Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the legislature, if $\frac{2}{3}$ of all the members elected to each house concur therein. All other judicial officers, except justices of the peace and judges or justices of inferior courts not of record, may be removed by the senate, on the recommendation of the governor, if $\frac{2}{3}$ of all the members elected to the senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on 216 (65)

the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal—(*1846-94.*)

217 (66) (221) 12. *Salaries*—The judges and justices hereinbefore mentioned shall receive for their services a compensation established by law, which shall not be increased or diminished during their official terms, except as provided in section 5 of this article. No person shall hold the office of judge or justice of any court longer than until and including the last day of December next after he shall be 70 years of age. No judge or justice elected after the 1st day of January, 1894, shall be entitled to receive any compensation after the last day of December next after he shall be 70 years of age; but the compensation of every judge of the court of appeals or justice of the supreme court elected prior to the first day of January, 1894, whose term of office has been, or whose present term of office shall be, so abridged, and who shall have served as such judge or justice 10 years or more, shall be continued during the remainder of the term for which he was elected; but any such judge or justice may, with his consent, be assigned by the governor, from time to time, to any duty in the supreme court while his compensation is so continued.—(*1846-94.*)

218 (65) (13) (61) 13. *Impeachment*—The assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The court for the trial of impeachments shall be composed of the president of the senate, the senators, or the major part of them, and the judges of the court of appeals, or the major part of them. On the trial of an impeachment against the governor or lieutenant-governor, the lieutenant-governor shall not act as a member of the court. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the senate, until he shall have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of $\frac{2}{3}$ of the members present. Judgment in cases

of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this state; but the party impeached shall be liable to indictment and punishment according to law.—(*1846-94.*) (14) (187)

14. *County courts*—The existing county courts are continued, and the judges thereof now in office shall hold their offices until the expiration of their respective terms. In the county of Kings there shall be 2 county judges, and the additional county judge shall be chosen at the next general election held after the adoption of this article. The successors of the several county judges shall be chosen by the electors of the counties for the term of 6 years. County courts shall have the powers and jurisdiction they now possess, and also original jurisdiction in actions for the recovery of money only, where the defendants reside in the county, and in which the complaint demands judgment for a sum not exceeding $2,000. The legislature may hereafter enlarge or restrict the jurisdiction of the county courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the of money only, in which the sum demanded exceeds $2,000, or in which any person not a resident of the county is a defendant. 219 (89)

Courts of sessions, except in the county of New York, are abolished from and after the last day of December, 1895. All the jurisdiction of the court of sessions in each county, except the county of New York, shall thereupon be vested in the county court thereof, and all actions and proceedings then pending in such courts of sessions shall be transferred to said county courts for hearing and determination. Every county judge shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A county judge of any county may hold county courts in any other county when requested by the judge of such other county. (*1846-94.*) 220 (229)

15. *Surrogates courts*—The existing surrogates courts are continued, and the surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their 221

terms of office shall be 6 years, except in the county of New York, where they shall continue to be 14 years. Surrogates and surrogates courts shall have the jurisdiction and powers which the surrogates and existing surrogates courts now possess, until otherwise provided by the legislature. The county judge shall be surrogate of his county, except where a separate surrogate has been or shall be elected. In counties having a population exceeding 40,000, wherein there is no separate surrogate, the legislature may provide for the election of a separate officer to be surrogate, whose term of office shall be 6 years. When the surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. No county judge or surrogate shall hold office longer than until and including the last day of December next after he shall be 70 years of age. Vacancies occurring in the office of county judge or surrogate shall be filled in the same manner as like vacancies occurring in the supreme court. The compensation of any county judge or surrogate shall not be increased or diminished during his term of office. For the relief of surrogates courts the legislature may confer upon the supreme court in any county having a population exceeding 400,000, the powers and jurisdiction of surrogates, with authority to try issues of fact by jury in probate cases.—(*1846-94.*)

(217) (59) (66) (190) (221) (226) (268)

222 16. *Vacancies*—The legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed 2 in any county, to discharge the duties of county judge and of surrogate, in cases of their inability, or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law.—(*1846-94.*)

[223 17. *Justices of the peace*—The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the legislature may direct, elect justices of the peace, whose term of office shall be 4 years. In case of an election to fill a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts not of

record, and their clerks, may be removed for cause, after due notice and an opportunity of being heard, by such courts as are or may be prescribed by law. Justices of the peace and district court justices may be elected in the different cities of this state in such manner, and with such powers, and for such terms, respectively, as are or shall be prescribed by law; all other judicial officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of such cities, or appointed by some local authorities thereof.—(*1846-94.*)

18. *Local courts*—Inferior local courts of civil and criminal jurisdiction may be established by the legislature, but no inferior local court hereafter created shall be a court of record. The legislature shall not hereafter confer upon any inferior or local court of its creation, any equity jurisdiction or any greater jurisdiction in other respects than is conferred upon county courts by or under this article. Except as herein otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the legislature may direct.—(*1846-94.*) 224 (219)

19. *Clerks*—Clerks of the several counties shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. The justices of the appellate division in each department shall have power to appoint and to remove a clerk who shall keep his office at a place to be designated by said justices. The clerk of the court of appeals shall keep his office at the seat of government. The clerk of the court of appeals and the clerks of the appellate division shall receive compensation to be established by law and paid out of the public treasury.—(*1846-94*) 225

20. *Compensation*—No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office; nor shall any judge of the court of appeals, or justice of the supreme court, or any county judge or surrogate hereafter elected in a county having a population exceeding 120,000, practise as an attorney or counsellor in any court of record in this state, or act as referee. The legislature may impose a similar prohibition upon county judges and surrogates in other counties. No one shall be eligible to the office of judge of the court of appeals, justice of 226 (59) (66) (190) (226) (268)

the supreme court, or, except in the county of Hamilton, to the office of county judge or surrogate, who is not an attorney and counsellor of this state.—(*1846-94.*)

227 (19) 21. *Legal publications*—The legislature shall provide for the speedy publication of all statutes; and shall regulate the reporting of the decisions of the courts; but all laws and judicial decisions shall be free for publication by any person.—(*1846-94.*)

228 22. *Expiration of terms of office*—Justices of the peace and other local judicial officer provided for in sections 17 and 18, in office when this article takes effect, shall hold their offices until the expiration of their respective terms.—(*1846-94.*)

229 (220) 23. *Special sessions*—Courts of special sessions shall have such jurisdiction of offences of the grade of misdemeanors as may be prescribed by law.

ARTICLE VII.—State debts

230 (26) 1. *State credit*—The credit of the state shall not in any manner be given or loaned to or in aid of any individual, association or corporation.

231 (27) 2. *State debts*—The state may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts; but such debts direct or contingent, singly or in the aggregate, shall not at any time exceed $1,000,000; and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were obtained, or to repay the debts so contracted, and to no other purpose whatever.

232 (26) 3. *Emergencies*—In addition to the above limited power to contract debts, the state may contract debts to repel invasion, suppress insurrection, or defend the state in war ; but the money arising from the contracting of such debts shall be applied to the the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

233 (192) (240) 4. *Limits of legislative power*—Except the debts specified in sections 2 and 3 of this article, no debts shall hereafter be contracted by or on behalf of this state, unless (1) such debt shall be authorized by a law, (2) for some single work or object, (3) to be distinctly specified therein ; and (4) such law shall impose and provide for the collection of a direct annual tax to pay, and suf-

ficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal of such debt (5) within 18 years from the time of the contracting thereof. (6) No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election. On the final passage of such bill in either house of the legislature, the question shall be taken by ayes and noes, to be duly entered upon the (155)
journals thereof, and shall be : " Shall this bill pass, and ought the same to receive the sanction of people ?"

The legislature may at any time, after the approval of such 234
law by the people, if no debt shall have been contracted in pursuancethere of, repeal the same ; and may at any time, by law, forbid the contracting of any further debt or liability under such law ; but the tax imposed by such act in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability. The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. No such law shall shall be submitted to be voted on, within 3 months after its passage, or at any general election when any other law, or any bill, or any amendment to the constitution, shall be submitted to be voted for or against.

5. *Sinking funds*—The sinking funds provided for the pay- 235
ment of interest and the extinguishment of the principal of the debts of the state shall be separately kept and safely invested, and neither of them shall be appropriated or used in any manner other than for the specific purpose for which it shall have been provided.

6. *Limitation*—Neither the legislature, canal board, nor any 236
person or persons acting in behalf of the state, shall audit, allow or pay any claim which, as between citizens of the state, would be barred by lapse of time. This provision shall not be con-

strued to repeal any statute fixing the time within which claims shall be presented or allowed, nor shall it extend to any claim duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant shall be under legal disability, the claim may be presented within 2 years after such disability is removed.

237 (77) 7. *Forest preserve*—The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.—(*1894.*)

238 8. *Canals*—The legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal or the Black River canal ;* but they shall remain the property of the state and under its management forever. The prohibition of lease, sale or other disposition herein contained, shall not apply to the canal known as the Main and Hamburg street canal, situated in the city of Buffalo, and which extends easterly from the westerly line of Main street to the westerly line of Hamburg street. All funds that may be derived from any lease, sale or other disposition of any canal shall be applied to the improvement, superintendence or repair of the remaining portion of the canals.—(*1846-94.*)

239 9. *No tolls*—No tolls shall hereafter be imposed on persons or property transported on the canals, but all boats navigating the canals and the owners and masters therof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals. All contracts for work or materials on any canal shall be made with the persons who shall offer to do or provide the same at the lowest price, with adequate security for their performance. No extra compensation shall be made to any contractor ; but if, from any unforeseen cause, the terms of any contract shall prove to be

* See map of the state canals, page 53.

unjust and oppressive, the canal board may, upon the application of the contractor, cancel such contract.

10. *Improvement of canals*—The canals may be improved in such manner as the legislature shall provide by law. A debt may be authorized for that purpose in the mode prescribed by section 4 of this article, or the cost of such improvement may be defrayed by the appropriation of funds from the state treasury, or by equitable annual tax. (*1894.*) 240 (233)

ARTICLE VIII---Corporations

1. *How created*—Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed. 241 (171)

2. *Debts*—Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law. 242

3. *Definition*—The term corporations as used in this article shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

4. *Bank charters*—The legislature shall, by general law, confirm all charters of savings banks, or institutions for savings, to a uniformity of powers, rights and liabilities, and all charters hereafter granted for such corporations shall be made to conform to such general law, and to such amendments as may be made thereto. And no such corporation shall have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings. The legislature shall have no power to pass any act granting any special charter for banking purposes, but corporations or associations may be formed for such purposes under general laws. 244 (171)

245 5. *Specie payments*—The legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the sus-
(51) pension of specie payments, by any person, association or corporation, issuing bank notes of any description.

246 6. *Registry of bills*—The legislature shall provide by law for the registry of all bills or notes, issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

247 7. *Stockholders responsible*—The stockholders of every corporation and joint-stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

248 8. *Insolvent banks*—In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

249 9. *State credit*—Neither the credit nor the money of the state shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the legislature from making such provision for the edu-
(254) cation and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the state for educational purposes.

250 10. *Restrictions on local indebtedness*—No county, city, town or village shall hereafter give any money or property, or loan its
(275) money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed 10 per centum of the assessed valuation of the real estate of such county

or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for state or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds 10 per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebteded in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water: but the term of the bonds issued to provide the supply of water shall not exceed 20 years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within 5 years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted. Whenever the boundaries of any city are the same as those of a county, or when any city shall include within its boundaries more than one county, the power of any county wholly included within each city to become indebted shall cease, but the debt of the county heretofore existing shall not for the purposes of this section be reckoned as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over 100,000 inhabitants, or any such city of this state, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year 2 per centum of the assessed valua-

tion of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.—(*1846–94*).

251 11. *State commissions*—The legislature shall provide for a state board of charities, which shall visit and inspect all institutions, whether state, county, municipal, incorporated or not incorporated, which are of a charitable, eleemosynary, correctional or reformatory character, excepting only such institutions as are hereby made subject to the visitation and inspection of either of the commissions hereinafter mentioned, but including all reformatories except those in which adult males convicted of felony shall be confined; a state commission in lunacy, which shall visit and inspect all institutions, either public, or private, used for the care and treatment of the insane (not including institutions for epileptics or idiots); a state commission of prisons, which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors.—(*1894.*)

252 12. *Appointment*—The members of the said board and of the said commissions shall be appointed by the governor, by and with the advice and consent of the senate; and any member may be removed from office by the governor for cause, an opportunity having been given him to be heard in his defence.—(*1894.*)

253 13. *Existing laws*—Existing laws relating to institutions referred to in the foregoing sections and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of the constitution, shall remain in force until amended or repealed by the legislature. The visitation and inspection herein provided for, shall not be exclusive of other visitation and inspection now authorized by law.—(*1894.*)

254 14. *Charitable institutions*—Nothing in this constitution contained shall prevent the legislature from making such provision
(249) for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper; or prevent any county, city, town or village from providing for the care, support, maintenance and secular education, of inmates of orphan

asylums, homes for dependent children or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the state board of charities. Such rules shall be subject to the control of the legislature by general laws.—(*1894.*)

15. *Additional powers*—Commissioners of the state board of 255
charities and commissioners of the state commission in lunacy, now holding office, shall be continued in office for the term for which they were appointed, respectively, unless the legislature shall otherwise provide. The legislature may confer upon the commissioners and upon the board mentioned in the foregoing sections any additional powers that are not inconsistent with other provisions of the constitution.—(*1894.*)

ARTICLE IX—Education

1. *Free schools*—The legislature shall provide for the maintain- 256
ance and support of a system of free common schools, wherein all the children of this state may be educated.—(*1894.*)

2. *Regents of the University*—The corporation created in the 257
year 1784, under the name of the regents of the University of the State of New York, is hereby continued under the name of The University of the State of New York. It shall be governed, and its corporate powers, which may be increased, modified or diminished by the legislature, shall be exercised, by not less than 9 regents.—(*1894.*)

3. *Application of funds*—The capital of the common school 258
fund, the capital of the literature fund, and the capital of the United States deposit fund, shall be respectively preserved inviolate. The revenue of the said common school fund shall be applied to the support of common schools; the revenue of the said literature fund shall be applied to the support of academies; and the sum of $25,000 of the revenues of the United States de-

posit fund shall each year be appropriated to and made part of the capital of the said common school fund.

259 4. *Sectarian appropriations*—Neither the state nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctorine is taught.—(*1894.*)

ARTICLE X—County officers

260 1. *County officers*—Sheriffs, clerks of counties, district attorneys, and registers in counties having registers, shall be chosen by the electors of the respective counties, once in every 3 years and as often as vacancies shall happen, except in the counties of New York and Kings, and in counties whose boundaries are the same as those of a city, where such officers shall be chosen by the electors once in every 2 or 4 years as the legislature shall direct. Sheriffs shall hold no other office and be ineligible for the next term after the termination of their offices. They may be required by law to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of (198) the sheriff. The governor may remove any officer, in this section (266) mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defence.—(*1846-94.*)

261 2. *Election of officers*—All county officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties or appointed by the boards of supervisors, or other county authorities, as the legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for

by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the legislature may direct.

3. *Term of office*—When the duration of any office is not provided by this constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment. 262

4. *Time of election*—The time of electing all officers named in this article shall be prescribed by law. 263

5. *Vacancies*—The legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy. 264 (211)

6. *Political year*—The political year and legislative term shall begin on the 1st day of January; and the legislature shall, every year, assemble on the 1st Wednesday in January.—(*1846-94.*) 265

7. *Removal*—Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal. 266 (216)

8. *Offices deemed vacant*—The legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this constitution. 267

9. *Salaries*—No officer whose salary is fixed by the constitution shall receive any additional compensation. Each of the other state officers named in the constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed; nor shall he receive to his use any fees or perquisites of office as other compensation. 268 (59) (66) (167)

ARTICLE XI—Militia

1. *How constituted*—All able-bodied male citizens between the ages of 18 and 45 years, who are residents of the state, shall con- 269 (85)

(41) stitute the militia, subject however, to such exemptions as are now, or may be hereafter created by the laws of the United States, or by the legislature of this state.

270 2. *Enlistment*—The legislature may provide for the enlistment into the active force of such other persons as may make application to be so enlisted.—(*1894.*)

271 3. *Organization*—The militia shall be organized and divided into such land and naval, and active and reserve forces, as the legislature may deem proper, provided however that there shall be maintained at all times a force of not less than 10,000 enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service. And it shall be the duty of the legislature at each session to make sufficient appropriation for the maintenance thereof.—(*1894.*)

272 4. *Staff*—The governor shall appoint the chiefs of the several
(41) staff departments, his aides-de-camp and military secretary, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the governor shall have been elected; he shall also nominate, and with the consent of the senate appoint, all major-generals.—(*1846-94.*)

273 5. *Other officers*—All other commissioned and non-commissioned
(41) officers shall be chosen or appointed in such manner as the legislature may deem most conducive to the improvement of the militia, provided however that no law shall be passed changing the existing mode of election and appointment unless $\frac{2}{3}$ of the members present in each house shall concur therein.—(*1846-94.*)

274 6. *Commissioned officers*—The commissioned officers shall be
(41) commissioned by the governor as commander-in-chief. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the senate on the recommendation of the governor, stating the grounds on which such removal is recommended, or by the sentence of a court-martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of six months or more.—(*1846-94.*)

ARTICLE XII---Cities and incorporated villages

275 1. *Organization*—It shall be the duty of the legislature to pro-

vide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, (250)
contracting debts, and loaning their credit, so as to prevent abuses in assessments, and in contracting debt by such municipal corporations.

2. *Mayor's veto*—All cities are classified according to the latest 276
state enumeration, as from time to time made, as follows: The 1st class includes all cities having a population of 250,000, or more; the 2d class, all cities having a population of 50,000 and less than 250,000; the 3d class, all other cities. Laws relating to the prop- (279)
erty, affairs of government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After (171)
any bill for a special city law, relating to a city, has been passed by both branches of the legislature, (1) the house in which it orignated shall immediately transmit a certified copy thereof to (191)
the mayor of such city, and (2) within 15 days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the legislature at which such bill was passed has terminated, to the governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same.

(3) In every city of the first class, the mayor and in every other 277
city the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the legislature may provide for the concurrence of the legislative body in cities of the first class. (4) The legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon.

(5) Such a bill, if it relates to more than one city, shall be trans- 278
mitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. (6) Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the governor. (7) Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or

cities to which it relates, or within such 15 days is not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject as are other bills, to the action of the governor. (8) In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city", or "cities", as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city", or "cities", as the case may be.—(*1894*).

279 3. *Elections*—All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-
(149) numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. The terms of office of all such officers, elected before the 1st day of January, 1895, whose successors have not then been elected, which under existing laws would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which under existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to
(276) any city of the 3d class, or to elections of any judicial officer, except judges and justices of inferior local courts.—(*1894*).

ARTICLE XIII---Oath of office

280 1. *Form prescribed.*—Members of the legislature, and all officers
(60) executive and judicial, except such inferior officers as shall be by
(82) law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of———, according to the best of my ab-

ility;" and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed together with the following additions thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote," and no other oath, declaration or test shall be required as a qualification for any office of public trust. 281 (131) (114)

2. *Taking bribes.*—Any person holding office under the laws of this state, who, except in payment of his legal salary, fees or perquisites, shall receive or consent to receive, directly or indirectly any thing of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby, shall be deemed guilty of a felony. This section shall not affect the validity of any existing statute in relation to the offence of bribery. 282 (131)

3. *Offering bribes*—Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer to whom it was tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony. 283 (131) (117)

4. *Trial for bribery*—Any person charged with receiving a bribe, or with offering or promising a bribe, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor. 284 (131)

5. *Railroad passes*—No public officer or person elected or ap- 285

pointed to a public office, under the laws of this state, shall directly or indirectly ask, demand, accept, receive or consent to receive for his own use or benefit, or for the use or benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph or telephone rates, from any person or corporation, or make use of the same himself or in conjunction with another. A person who violates any provision of this section, shall be deemed guilty of a misdemeanor, and shall forfeit his office at the suit of the attorney-general. Any corporation or officer or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination, shall also be deemed guilty of a misdemeanor and liable to punishment, except as herein provided. No person or officer or agent of a corporation giving any such free pass, free transportation, franking privilege or discrimination hereby
(117) prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same.—(*1894.*)

286 6. *Removal for failure to prosecute*—Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article which may come to his knowledge, shall be removed from office by the governor, after due notice and an opportunity of being heard in his defence. The expenses which shall be incurred by any county, in investigating and prosecuting any charge of bribery or attempting to bribe any person holding office under the laws of this state, within such county, or of receiving bribes by any such person in said county, shall be a charge against the state, and their payment by the state shall be provided for by law.

ARTICLE XIV—Amendments

287 1. *How made*—Any amendment or amendments to this constitu-
(79) tion (1) may be proposed in the senate and assembly; and (2) if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, and the yeas and nays taken thereon, and (3) referred to the legislature to be chosen at the next general election of senators, and (4) shall be published

for 3 months previous to the time of making such choice; and (5) if in the legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then (6) it shall be the duty of the legislature to submit such proposed amendment or amendments to the people for approval in such manner and at such times as the legislature shall prescribe; and (7) if the people (234) shall approve and ratify such amendment or amendment by a majority of the electors voting thereon, such amendments or amendments shall become a part of the constitution from and after the 1st day of January next after such approval.—(*1846–94*).

2. *Constitutional conventions*—At the general election to be held 288 in the year 1916, and every 20th year thereafter, and also at such times as the legislature may by law provide, the question, "Shall there be a convention to revise the constitution and amend the same?" shall be decided by the electors of the state; and in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the state, as then organized, shall elect 3 delegates at the next ensuing general election at which members of the assembly shall be chosen, and the electors of the state voting at the same election shall elect 15 delegates-at-large. The delegates so elected shall convene at the capitol on the 1st Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to the mem- (146) bers of the assembly. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to the constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays being (155) entered on the journal to be kept. The convention shall have the power to appoint such officers, employes and assistants as it may deem necessary, and fix their compensation, and to provide for the printing of its documents, journal and proceedings. The convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election returns and qualifica- (150)

tions of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large. Any proposed constitution or constitutional amendment which shall have been adopted by such convention, shall be submitted to a vote of the electors of the state at the time and in the manner provided by such convention, at an election which shall be held not less than 6 weeks after the adjournment of such convention. Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendment shall go into effect on the 1st day of January next after such approval.—(*1846-94.*)

289 3. *Legislative amendments*—Any amendment proposed by a constitutional convention relating to the same subject as an amendment proposed by the legislature, coincidently submitted to the people for approval at the general election held in the year 1894, or at any subsequent election, shall, if approved, be deemed to supersede the amendment so proposed by the legislature.—(*1894.*)

ARTICLE XV.—Date of taking effect.

290 1. The constitution shall be in force from and including the 1st day of January, 1895, except as herein otherwise provided.—(*1894.*)

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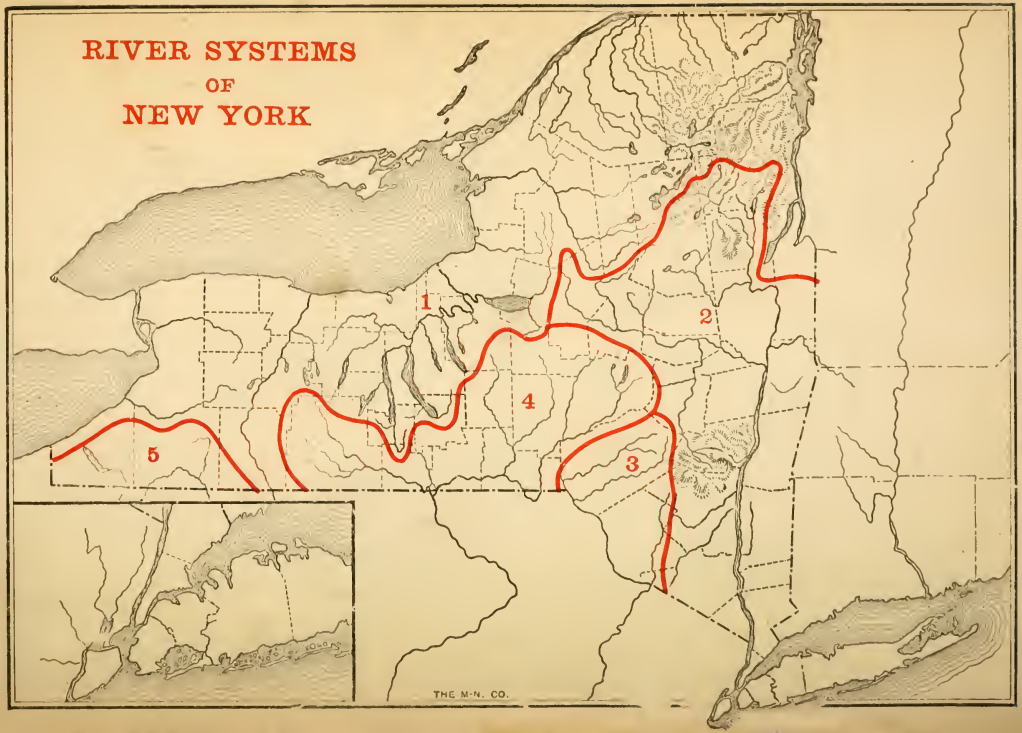
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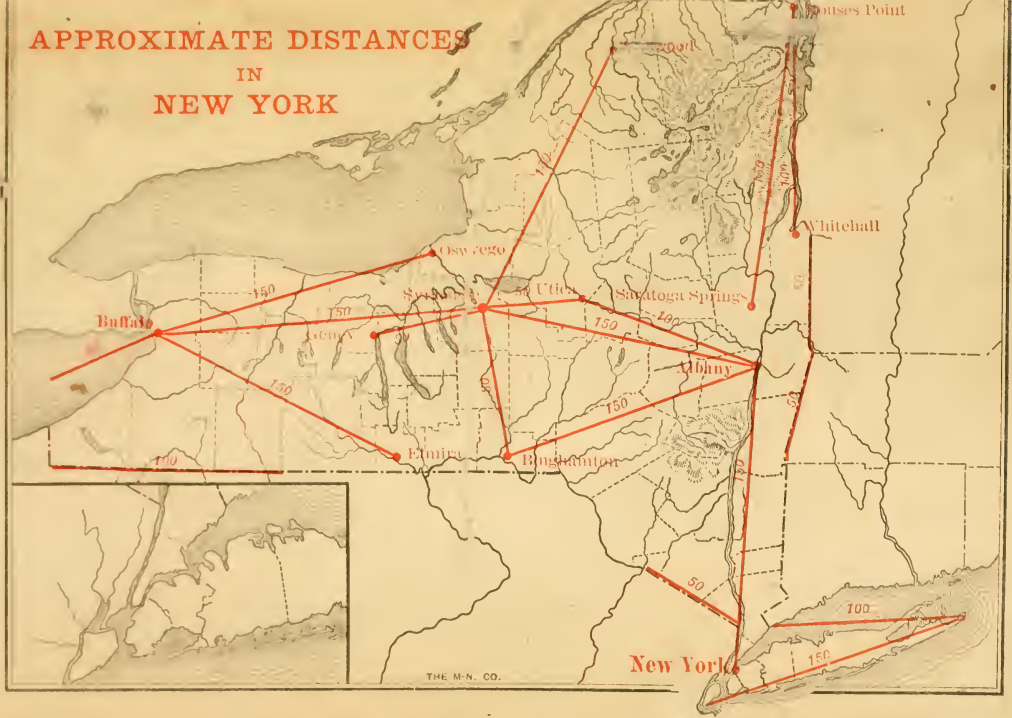
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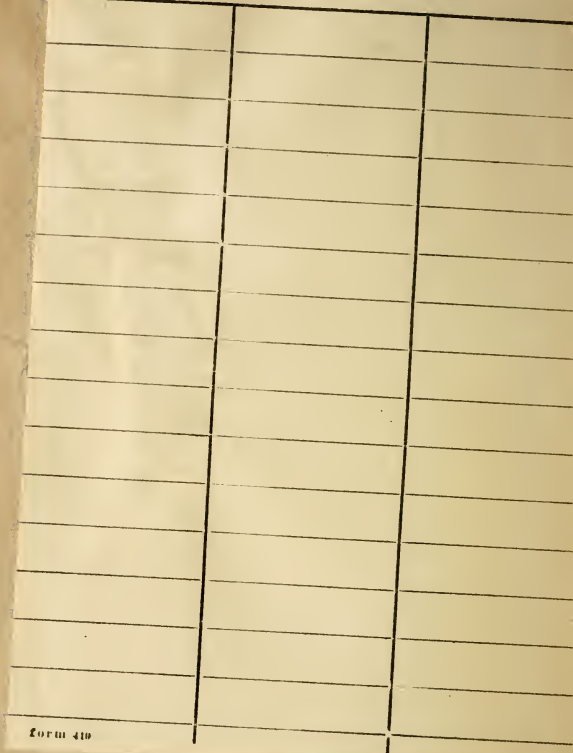

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